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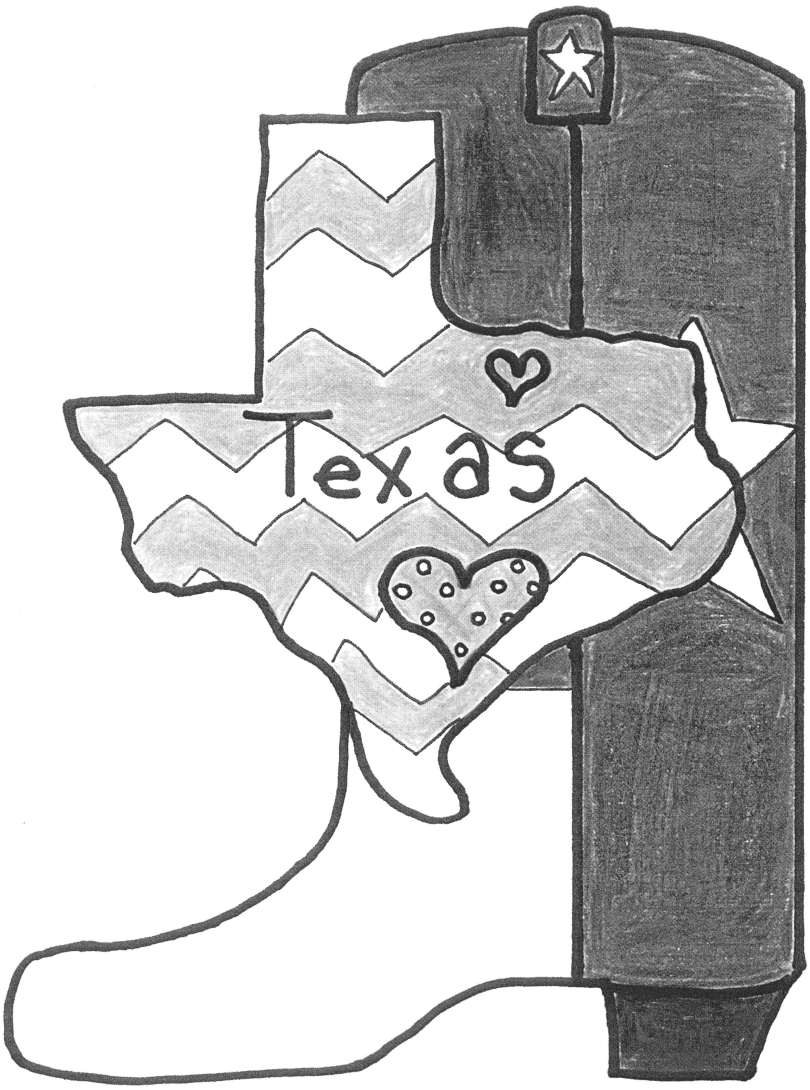
Texas

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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER K. FORMULA ADVISORY COMMITTEE - COMMUNITY AND TECHNICAL COLLEGES

19 TAC §§1.156 - 1.163

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter K, §§1.156 - 1.163, concerning the Community and Technical Colleges Formula Advisory Committee (CTCFAC).

The Coordinating Board adopts the repeal on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, the Coordinating Board plans to repeal this subchapter and replace it with new language establishing the Standing Advisory Committee for Public Junior Colleges, in accordance with changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board also intends to adopt new rules continuing the representation of technical colleges and state colleges in a different advisory committee and transferring the Report of Fundable Operating Expenses provision to a different chapter of Texas Administrative Code (TAC).

Rules 1.156 - 1.163 concern the establishment of the CTCFAC, including the authority and purpose for the committee and its membership, duration, meetings, assigned tasks, and other matters related to formula funding for the community and technical colleges sector.

Statute charges the Coordinating Board with establishing committees composed of representatives from each institutional grouping to study and recommend changes in the funding formulas for each institutional group (Texas Education Code (TEC), §61.059(b)-(b-1)). Currently, the Coordinating Board organizes this obligation in three advisory committees: one for community and technical colleges (encompassing public junior colleges, public technical colleges, and public state colleges), one for general academic institutions, and one for health-related institutions.

As part of the changes enacted by H.B. 8, statute no longer includes public junior colleges funded under TEC, Chapter 130A, on these formula advisory committees (Section 22, H.B. 8, 88th Leg., R.S. (2023)). Instead, these functions will move to a different committee: the public junior college sector will now give advice and counsel on funding through a standing advisory committee established under TEC, §130.001(b) (Section 33, H.B. 8, 88th Leg., R.S. (2023)).

The Coordinating Board intends to repeal Chapter 1, Subchapter K, relating to the CTCFAC, in order to adopt a new chapter establishing the Standing Advisory Committee for Public Junior Colleges. Certain functions currently contained in Chapter 1, Subchapter K, will move to other sections of TAC: the Coordinating Board will ensure that technical colleges and state colleges have continued representation in this process by amending 19 TAC, Part 1, Chapter 1, Subchapter L, to include them within the current formula advisory committee framework. The Coordinating Board also intends to continue the Report of Fundable Operating Expenses in another subchapter of TAC specifically relating to reporting and data requirements for the community college formula funding process.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is updating TAC to reflect statutory changes to the constitution of the formula advisory committees. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

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;

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

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

The repeal is adopted on an emergency basis under Texas Education Code, Section 61.059(b)-(b-1), which provides the Coordinating Board with the authority to establish advisory committees consisting of cross-institutional representatives to study and recommend changes in formula funding.

The repeal affects Texas Education Code, Sections 61.059(b)-(b-1) and 130.001(b).

§1.156. Authority and Specific Purposes of the Community and Technical Colleges Formula Advisory Committee.

§1.157. Definitions.

§1.158. Committee Membership and Officers.

§1.159. Duration.

§1.160. Meetings.

§1.161. Tasks Assigned to the Committee.

§1.162. Report of Fundable Operating Expenses.

§1.163. Report to the Board; Evaluation of Committee Costs and Effectiveness.

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 August 23, 2023.

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Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
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SUBCHAPTER K. STANDING [~~FORMULA~~] ADVISORY COMMITTEE: PUBLIC JUNIOR [~~COMMUNITY AND TECHNICAL~~] COLLEGES

19 TAC §§1.156 - 1.162

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter K, §§1.156 - 1.162, concerning the Standing Advisory Committee for Public Junior Colleges.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, these new sections will establish the Standing Advisory Committee for Public Junior Colleges, in accordance with statutory changes made by Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 1.156 establishes the statutory authority for the new standing advisory committee, which comes from legislative changes in Section 33, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code (TEC), §130.001(b)(5)). It also states the purposes of the new standing advisory committee are to provide advice and counsel regarding the funding of public junior colleges, as required by H.B. 8, as well as regarding financial incentives to achieve the goals of the state's higher education plan, as described in TEC, §61.051. The committee may also perform other duties as assigned by the Board or Commissioner, in keeping with TEC, §61.026.

Rule 1.157 contains definitions for common terms used in this subchapter. These definitions parallel definitions used in the TEC and in other parts of the Texas Administrative Code and provide clarity to the reader by distinguishing between the governing board and the agency as a whole.

Rule 1.158 states the membership requirements of the new standing committee and appointment process. The membership requirements are designed to ensure the committee consists of members who have appropriate subject-matter knowledge and who can represent the interests of a broad cross-section of the public junior college sector. The rule caps the number of members on the advisory committee at 12, below the maximum number required by Texas Government Code, §2110.002.

Rule 1.159 states that the committee may continue until September 1, 2027, a four-year period consistent with requirements for the duration of advisory committees contained in Texas Government Code, §2110.008.

Rule 1.160 states that the committee shall meet at least once per quarter and that the presiding officer may call special meetings.

Rule 1.161 stipulates the tasks assigned to the committee, which include providing counsel to the Board and Commissioner on the administration of the public junior college finance program as enacted in TEC, Chapter 130A; studying and making recommendations for the modifications of formula funding or other components of the finance program; identifying funding incentives to accomplish the objectives in the state's strategic plan for higher education; and other charges as devised by the Board or Commissioner.

Rule 1.162 requires the committee to provide an annual report to the Commissioner on May 15 of each year, and states that the Commissioner shall review and provide recommendations during the Board's regular July board meeting. The timing of this report ensures that the Board may adopt finance recommendations at an appropriate point during the state fiscal cycle, to help inform deliberations prior to legislative session and the development of the appropriations bill.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has determined that the public benefit anticipated as the result of adopting this rule is establishing a forum for public junior colleges to provide the Coordinating Board with advice and counsel with respect to the funding of that sector, aligning Coordinating Board rules with recent statutory changes. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

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;

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

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

The new sections are adopted on an emergency basis under Texas Education Code, Section 130.001(b), which provides the Coordinating Board with the authority to establish a standing advisory committee composed of representatives of public junior colleges to provide advice and counsel with respect to the funding of public junior colleges.

The new sections affect Texas Education Code, §§61.026 and 130.001(b), and Texas Government Code, Chapter 2110.

§1.156. Authority and Specific Purposes of the Standing Advisory Committee for Public Junior Colleges.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §130.001(b).

(b) Purposes. The Standing Advisory Committee for Public Junior Colleges is created to provide the Commissioner and Board with advice and counsel with respect to the funding of public junior colleges and financial incentives to achieve the goals of the state's higher education plan and carry out the purposes of Texas Education Code, Chapter 130A, implementing the Public Junior College Finance Program. The committee also performs other duties related to funding that the Board or Commissioner assign to the committee.

§1.157. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Coordinating Board--Unless context indicates otherwise, the agency known as the Texas Higher Education Coordinating Board and staff employed by the agency to carry out assigned duties of the agency.

§1.158. Committee Membership and Officers.

(a) Membership shall consist of senior administrators and representatives of Texas public junior colleges with knowledge of the current funding formulas and the educational goals of the state.

(b) Membership on the committee should include:

(1) Representatives of each accountability group;

(2) Presidents or Chancellors;

(3) Chief Financial or Academic Officers; and

(4) Institutional Research or other expert campus representatives.

(c) The number of committee members shall not exceed twelve (12).

(d) The Commissioner shall recommend members to the Board for appointment.

(e) The Commissioner shall select the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board and the Commissioner.

(f) Each member shall serve a three-year staggered term, unless otherwise provided by the Commissioner. A member may serve more than one term.

(g) The committee may appoint subcommittees or workgroups as necessary to complete the work.

§1.159. Duration.

The committee shall continue until September 1, 2027, and may be re-established by the Board.

§1.160. Meetings.

The committee shall meet on a regular basis not less than once a quarter. Special meetings may be called as deemed appropriate by the presiding officer.

§1.161. Tasks Assigned to the Committee.

Tasks assigned to the committee include:

(1) Provide counsel to the Board and Commissioner on the administration of the Public Junior College Finance Program;

(2) Study and make recommendations for modification to the formulas and other components of the Public Junior College Finance Program that will increase effectiveness and efficiencies of the programs delivered;

(3) Identify funding incentives that would support the achievement of the state's goals outlined in the long-term master plan for higher education authorized in the Texas Education Code, §61.051(a-1); and

(4) Any other charges issued by the Board or Commissioner of Higher Education.

§1.162. Report.

The committee shall provide an annual report on its activities and recommendations to the Commissioner not later than May 15 of each year. The Commissioner shall review and provide funding recommendations to the Board annually at the July Board meeting. The Commissioner may modify these timelines as needed to implement the Public Junior College Finance Program.

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.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER L. FORMULA ADVISORY COMMITTEE - GENERAL ACADEMIC INSTITUTIONS

19 TAC §§1.164 - 1.167

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amended rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter L, §§1.164 - 1.167, concerning the General Academic Institutions Formula Advisory Committee (GAIFAC).

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

This amendment adds public technical colleges and public state colleges to the existing GAIFAC, ensuring that those institutions will continue to have representation on formula advisory committees established under Texas Education Code (TEC), §61.059(b)-(b-1), following their removal from the committee for community colleges.

Rules 1.164 - 1.167 make conforming changes to the Texas Administrative Code reflecting the decision to include the technical colleges and state colleges in the existing GAIFAC.

Statute charges the Coordinating Board with establishing committees composed of representatives from each institutional grouping to study and recommend changes in the funding formulas for each institutional group (TEC, §61.059(b)-(b-1)). Currently, the Coordinating Board organizes this obligation in three advisory committees: one for community and technical colleges (encompassing public junior colleges, public technical colleges, and public state colleges), one for general academic institutions, and one for health-related institutions.

As part of the changes enacted by H.B. 8, statute no longer includes public junior colleges funded under TEC, Chapter 130A, on these formula advisory committees (Section 22, H.B. 8, 88th Leg., R.S. (2023)). Instead, these functions will move to a different committee: the public junior college sector will now give advice and counsel on funding through a standing advisory committee established under TEC, §130.001(b) (Section 33, H.B. 8, 88th Leg., R.S. (2023)).

The Coordinating Board intends to establish a new advisory committee solely for public junior colleges. To ensure that public technical colleges and public state colleges continue to have representation on the formula advisory committees, the Coordinating Board proposes including their representatives on the GAIFAC.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, 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 ensuring the continued representation of public technical colleges and public state colleges in the formula funding policymaking process, in accordance with TEC, §61.059(b)-(b-1). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

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;

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

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

The amendment is adopted on an emergency basis under Texas Education Code, Section 61.059(b)-(b-1), which provides the Coordinating Board with the authority to establish advisory committees consisting of cross-institutional representatives to study and recommend changes in formula funding.

Statutory authority for this subchapter is provided in the Texas Education Code, §61.059(b) and (b-1).

The amendment affects Texas Education Code, Sections 61.059(b)-(b-1) and 130.001(b).

§1.164. Authority and Specific Purposes of the General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.059(b) and (b-1).

(b) Purposes. The General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee is created to provide the Board with advice and recommendation(s) regarding a set of formulas that provide appropriate funding levels and financial incentives necessary to best achieve the goals of the state's higher education plan. The committee also performs other duties related to formula funding that the Board finds to be appropriate.

(b) Purposes. The General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee is created to provide the Board with advice and recommendation(s) regarding a set of formulas that provide appropriate funding levels and financial incentives necessary to best achieve the goals of the state's higher education plan. The committee also performs other duties related to formula funding that the Board finds to be appropriate.

§1.165. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Interested persons--Persons who attend committee meetings as representatives of stakeholder entities and any other persons who have made their interest in the work of the committee known to its presiding officer. Such interested persons may participate in committee discussions, as invited by the presiding officer to do so, but do not have the authority to cast votes.

(4) Public state colleges--Lamar State College - Port Arthur, Lamar State College - Orange, and Lamar Institute of Technology.

§1.166. Committee Membership and Officers.

(a) Membership shall consist of representatives of Texas public general academic institutions, public state colleges, and Texas State Technical College with knowledge of the current funding formulas and the educational goals of the state.

(b) Membership on the committee should include representatives of each accountability group and at least one individual each to represent the public state colleges and Texas State Technical Colleges.

(c) Interested persons, such as legislative and governmental relations staff shall be regularly advised of committee meetings.

(d) The number of committee members shall not exceed twenty-four (24).

(e) The committee may appoint subcommittees or workgroups as necessary to complete its work. The subcommittees or workgroups may include members from the formula advisory committees and other institutional representatives as appropriate.

(f) Members of the committee shall select the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

(g) Members shall serve six-year staggered terms with one-third of the membership expiring every other year. A member can be re-appointed to serve another term.

§1.167. Duration.

Not later than September 1 of each odd-numbered year, the Board shall appoint an advisory committee to review the funding formulas for the use of the Governor and the Legislative Budget Board in making appropriations recommendations to the legislature for general academic institutions, technical colleges, and state colleges.

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.

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Nichole Bunker-Henderson
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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §9.28, §9.29

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter B, §9.28 and §9.29, concerning the certification of public community colleges as eligible to receive state appropriations.

The Coordinating Board adopts the repeal on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, the Coordinating Board plans to repeal these rules and replace them with a new certification process as a result of changes in statute to certification made by Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 9.28 reiterates the requirements that were in the statute that community colleges had to meet to be eligible to receive state appropriations. This list was modified in Texas Education Code, §130.003, by Section 34 of Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 9.29 governs how the Coordinating Board receives and transmits those certifications to the Comptroller and State Auditor to affirm their eligibility to receive state appropriations. The required date and process to transmit these certifications was amended in Texas Education Code, §61.063, by Section 24 of Tex. H.B. 8, 88th Leg., R.S. (2023). Concurrent with other changes made by Tex. H.B. 8, 88th Leg., R.S. (2023), the certification process is being updated in alignment with statutory changes and moved to a new subchapter.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

The public benefit anticipated as the result of adopting this rule is updating Texas Administrative Code to be consistent with statutory changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). There

are no anticipated economic costs to persons who are required to comply with the sections as proposed.

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;

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

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

The repeal is adopted on an emergency basis under Texas Education Code, Section 61.063, which provides the Coordinating Board with the authority to certify what public junior colleges are eligible to receive state appropriations.

The repeal affects Texas Education Code, Sections 61.063 and 130.003.

§9.28. Appropriations.

§9.29. Certification.

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 August 23, 2023.

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SUBCHAPTER N. BACCALAUREATE DEGREE PROGRAMS

19 TAC §9.677

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amended rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 9, Subchapter N, §9.677, concerning the funding of baccalaureate degree programs at community colleges.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, this amendment will remove text on funding for baccalaureate degrees that is rendered obsolete by H.B. 8, 88th Leg., R.S. (2023) or moved to a different rule.

The deletion of §9.677(a) and (b) removes language on funding of baccalaureate degree programs at community colleges due to changes made by H.B. 8, 88th Leg., R.S. (2023). This language is repetitive of language in Texas Education Code (TEC), Section 130.310(a), that was amended in Section 42 of H.B. 8, 88th Leg., R.S. (2023) and is no longer needed to be expressed via rule.

The deletion of §9.677(c) removes language on funding of baccalaureate degree programs at community colleges that will instead be incorporated in a new rule the Coordinating Board plans to adopt simultaneously related to the new community college finance system.

The deletion of §9.677(d) and (e) removes obsolete language on funding of certain pilot project baccalaureate degree programs at community colleges that is no longer applicable under changes made by H.B. 8, 88th Leg., R.S. (2023). The deletion reflects Section 52, H.B. 8, 88th Leg., R.S. (2023), which repeals TEC, Section 130.310(b), requiring the Coordinating Board to submit funding recommendations to the Legislature related to the junior- and senior-level baccalaureate degree courses offered by public junior colleges. Previously, pilot project baccalaureate degree programs operated under a separate funding structure from other degrees offered by community colleges. These degrees will now be funded under the performance tier authorized under H.B. 8, 88th Leg., R.S. (2023); therefore, the text deleted is no longer necessary.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is that the Texas Administrative Code will accurately reflect statute related to the funding of Bachelor of Applied Technology programs at community colleges. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

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;

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

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

The amendment is adopted on an emergency basis under Texas Education Code, Section 130A.005(b), which provides the Coordinating Board with the general rulemaking authority to take actions consistent with Texas Education Code, Chapters 61, 130, and 130A.

The amendment affects Texas Education Code, Section 130.310.

§9.677. Limitations on Tuition [~~Funding~~].

~~[(a) Except as provided by subsection (b) of this section, a degree program created under this subchapter may be funded solely by a public junior college's proportionate share of state appropriations under §130.003, local funds, and private sources.]~~

~~[(b) This subchapter does not require the legislature to appropriate state funds to support a degree program created under this subchapter. Nor does this subsection prohibit the legislature from directly appropriating state funds to support junior-level and senior-level courses to which this subsection applies.]~~

~~[(c) The coordinating board shall weigh contact hours attributable to students enrolled in a junior-level or senior-level course offered under this subchapter used to determine a public junior college's proportionate share of state appropriations under Section 130.003 in the same manner as a lower division course in a corresponding field unless the college participated in a pilot project to offer baccalaureate degree programs as defined in §9.672(10) of this subchapter.]~~

~~[(d) Notwithstanding subsection (c) of this section, in its recommendations to the legislature relating to state funding for public junior colleges, the coordinating board shall recommend that a public junior college that participated in a pilot project to offer baccalaureate degree programs as defined in §9.672(10) of this subchapter receive substantially the same state support for junior-level and senior-level courses in the fields of applied science, applied technology, dental hygiene, and nursing offered under this subchapter as that provided to a general academic teaching institution for substantially similar courses.]~~

~~[(e) In determining the contact hours attributable to students enrolled in a junior-level or senior-level course in the field of applied science, applied technology, dental hygiene, or nursing offered under this section used to determine a public junior college's proportionate share of state appropriations under §130.003, the coordinating board shall weigh those contact hours as necessary to provide the junior college the appropriate level of state support to the extent state funds for those courses are included in the appropriations.]~~

[~~(f)~~] A public junior college may not charge a student enrolled in a baccalaureate degree program offered under this subchapter tuition and fees in an amount that exceeds the amount of tuition and fees charged by the junior college to a similarly situated student who is enrolled in an associate degree program in a corresponding field. This subsection does not apply to tuition and fees charged for a baccalaureate degree program in the field of applied science or applied technology previously offered as part of a pilot project to offer baccalaureate degree programs as defined in §9.672(10) of this subchapter.

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.

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Nichole Bunker-Henderson
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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER A. DEFINITIONS

19 TAC §13.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis amended rules in Texas Administrative Code (TAC), Title 19, Part 1, Chapter 13, Subchapter A, §13.1, concerning finance-related definitions.

The Coordinating Board adopts these amended rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

This amendment will add greater specificity and clarity to the definitions applying to finance-related rules. To implement H.B. 8, which makes significant changes to the funding system for community colleges, the Coordinating Board has determined the need for greater precision in the terminology used for financial rules broadly.

Rule 13.1(4), (7), and (8) specifies three distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board; "Coordinating Board," meaning the state agency as a whole; and "Coordinating Board Staff or Board Staff," meaning the staff of the agency. Separating these terms improves the readability and precision of the rules contained in Chapter 13 and allows the Coordinating Board to make a distinction between actions taken by the governing body, agency staff, and the agency as a whole.

Rule 13.1(5) defines the census date, which is the deadline for institutions to submit data relating to students in attendance for the purposes of formula funding. This definition implements Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (codified under Texas Education Code, §§130A.006 and 130A.008), which requires the Coordinating Board to stipulate data reporting requirements in rule.

Rule 13.1(25)-(28) separates a single definition for public two-year colleges into three different component sectors: public junior colleges, public technical institutes, and public state colleges. Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) codifies a formula funding system for public community colleges distinct from the formula funding systems for public technical institutions and public state colleges implemented in the General Appropriations Act. The revised definitions allow for greater drafting clarity and align finance terms in Chapter 13 with Texas Education Code, §61.003, and with institutional categories used by state appropriators.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect

there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, 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 establishing greater clarity and precision in the definitions used in Title 19, Part 1, Chapter 13, relating to Financial Planning. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

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;

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

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

The amendment is adopted on an emergency basis under Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023), to be codified under Texas Education Code, Section 130A.005, allowing the Coordinating Board to adopt rules necessary to implement and administer the Public Junior College State Finance Program.

The amendment affects Texas Education Code Section 61.003.

§13.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise or the relevant subchapter specifies a different definition.

(1) Auxiliary Enterprise--Activities providing a service to students, faculty, or staff for a fee directly related to, although not necessarily equal to, the cost of the service.

(2) Available University Fund (AUF)--A fund established in Article 7, §18, of the Texas Constitution to receive all interest and earnings of the Permanent University Fund and used to pay the debt service on PUF-backed bonds.

(3) Base Year--The semesters comprising the year of contact hours used for applying the formula funding distribution to the colleges and universities (usually the summer and fall of even years and the spring of odd years).

(4) Board [~~or Coordinating Board~~]--The governing body of the agency known as the [~~The~~] Texas Higher Education Coordinating Board.

(5) Census Date--The date upon which an institution may report a student in attendance for the purposes of formula funding as specified in the Coordinating Board Management (CBM) manual for the year in which the funding is reported.

(6) [~~(5)~~] Contact Hour--A time unit of instruction used by community, technical, and state colleges consisting of 60 minutes, of which 50 minutes must be direct instruction.

(7) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(8) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board and the Commissioner.

(9) [~~(6)~~] Current Operating Funds--Unrestricted (appropriated) funds, designated funds, restricted funds, and auxiliary enterprise funds.

(10) [~~(7)~~] Developmental Coursework--Non-degree-credit courses designed to address a student's deficiencies.

(11) [~~(8)~~] Developmental Education--Courses, tutorials, laboratories, or other efforts to bring student skills in reading, writing, and mathematics to entering college level. English as a Second Language (ESL) courses may be considered developmental education, but only when they are used to bring student skill levels in reading or writing to entering college level. The term as used in this chapter does not include courses in study skills or thinking skills.

(12) [~~(9)~~] Formula Funding--The mathematical method used to allocate appropriated sources of funds among institutions of higher education.

(13) [~~(10)~~] Functional categories (as defined by National Association of College [~~college~~] and University Business Officers)--Instruction, research, public service, academic support, student service, institutional support, operation and maintenance of plant, scholarships and fellowships, depreciation, auxiliary enterprises, and hospital.

(14) [~~(11)~~] General Academic Teaching Institution--Any college, university, or institution so classified in Texas Education Code, §61.003(3), or created and so classified by law.

(15) [~~(12)~~] General Revenue (GR)--State tax revenue.

(16) [~~(13)~~] Governmental Accounting Standards Board (GASB)--An entity created by the Financial Accounting Foundation to set accounting standards for governmental entities including public institutions of higher education.

(17) [~~(14)~~] Higher Education Fund (HEF)--A fund established in Article 7, §17, of the Texas Constitution to fund capital improvements and capital equipment for institutions not included in the Permanent University Fund.

(18) [~~(15)~~] Independent institution of higher education--A private or independent college or university as defined in Texas Education Code, §61.003(15), that is:

(A) organized under the Texas Non-Profit Corporation Act;

(B) exempt from taxation under Article VIII, §2, of the Texas Constitution and §501(c)(3) of the Internal Revenue Code; and

(C) accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

(19) [~~(16)~~] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or

other agency of higher education as defined in Texas Education Code, §61.003.

(20) [~~(17)~~] Institutional Expenditures--All costs of activities separately organized and operated in connection with instructional departments primarily for the purpose of giving professional training to students as a necessary part of the educational work of the related departments.

(21) [~~(18)~~] Institutional Funds--Fees, gifts, grants, contracts, and patient revenue, not appropriated by the legislature.

(22) [~~(19)~~] Local Funds--Tuition, certain fees, and other educational and general revenue appropriated by the legislature.

(23) [~~(20)~~] National Association of College and University Business Officers (NACUBO)--Provides guidance in business operations of higher education institutions.

(24) [~~(21)~~] Permanent University Fund (PUF)--A fund established in Article 7, §11, of the Texas Constitution to fund capital improvements and capital equipment at certain institutions of higher education.

~~[(22) Public Junior College, Public Technical Institute, Public State College, or Public Two-Year College--Any public junior college, public community college, public technical college, or public state college as defined in Texas Education Code, §61.003.]~~

(25) Public Junior College--A public institution of higher education as defined in Texas Education Code, §61.003(2).

(26) Public State College--Any public state college as defined in Texas Education Code, §61.003(16).

(27) Public Technical Institute--Any public technical institute as defined in Texas Education Code, §61.003(7), excluding Lamar Institute of Technology.

(28) Public Two-year College--Any public junior college, public community college, public technical institute, or public state college.

(29) [~~(23)~~] Semester Credit Hour (SCH)--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

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.

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SUBCHAPTER D. FINANCIAL REPORTING

19 TAC §13.62

The Texas Higher Education Coordinating Board (Coordinating Board) adopts on an emergency basis the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter D, §13.62, concerning updates to a manual for community college annual financial reports.

The Coordinating Board adopts the repeal on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning September 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, the Coordinating Board plans to repeal this rule and replace it with a new consolidated community college data reporting rule in coordination with changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board also intends to adopt new rules pertaining to community college financial reporting.

Rule 13.62 concerns annual updates to the community college annual financial report manual and its content. Concurrent with other changes made to the Texas Administrative Code related to H.B. 8, 88th Leg., R.S. (2023), the provisions of this rule are being merged with others pertaining to financial reporting by community colleges in a different subchapter.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

The public benefit anticipated as the result of adopting this rule is updating the Texas Administrative Code to have topically consistent organization in relation to the adoption of Tex. H.B. 8, 88th Leg., R.S. (2023). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

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;

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

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

The repeal is adopted on an emergency basis under Texas Education Code, Section 61.065, that provides the Coordinating Board with the authority to prescribe uniform financial reporting guidelines.

The repeal affects Texas Education Code, Section 61.065.

§13.62. Community Colleges.

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.

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19 TAC §13.63

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amended rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter D, §13.63, concerning requirements for community college financial reporting.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning September 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, the Coordinating Board plans to amend this rule and move community college-related provisions to a new consolidated community college data reporting rule in coordination with changes made by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board also intends to adopt new rules pertaining to community college financial reporting.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

The public benefit anticipated as the result of adopting this rule is updating the Texas Administrative Code to have topically consistent organization in relation to the adoption of Tex. H.B. 8, 88th Leg., R.S. (2023). There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

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;

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

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

The amendment is adopted on an emergency basis under Texas Education Code, Section 61.065, that provides the Coordinating Board with the authority to proscribe uniform financial reporting guidelines.

The amendment affects Texas Education Code, §61.065.

§13.63. Additional Financial Information Reporting.

(a) Each university system, general academic institution, technical or state college, and health-related institution shall provide to the Board financial data related to the operation of each system office and institution. This information should be reported in the Board's annual report of financial activity by fund group.

~~[(b) Each community college shall continue to provide to the Board financial data related to the operation of each community/junior college reflecting restricted and non-restricted operating revenues and operating expenses as directed by the Board.]~~

(b) ~~[(c)]~~ Each system office and institution of higher education, except public junior colleges, shall provide the report no later than January 1 of each year using the specific content and format prescribed by the Board.

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.

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SUBCHAPTER P. COMMUNITY COLLEGE FINANCE PROGRAM

19 TAC §§13.470 - 13.477

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter P, §§13.470 - 13.477, concerning the new community college finance system established by H.B. 8.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the

agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, this new sections will implement the new community college finance system established by Tex. H.B. 8, 88th Leg., R.S. (2023).

Rule 13.470, Purpose, establishes the purpose of subchapter P to govern the implementation of the community college finance system.

Rule 13.471, Authority, establishes the portions of Texas Education Code (TEC) that authorize the Coordinating Board to adopt rules pertaining to community college finance.

Rule 13.472, Definitions, lists definitions pertinent to the community college finance system.

Paragraphs (1), (2), and (13) define student weights as required by Sections 130A.054 and 130A.101 of H.B. 8 for use in the calculation of the base and performance tier. Economic disadvantage is based on the student's receipt of federal Pell grant funding due to that program's need-based design, which includes rigorous documentation of student needs and family resources, and academic disadvantage is based on the student's determination of college readiness, as measured through the Texas Success Initiative assessments. Adult learners are defined as students aged 25 years or older, in accordance with H.B. 8 requirements.

Paragraphs (7) - (9), (15), (21), and (26) provide definitions for terms (base year, basic allotment, census date, full-time student equivalent (FTSE), local share, weighted FTSE used in the calculation of the base tier, defined in paragraph (6), which measures a college's instruction and operations (I&O) needs based on their weighted FTSEs and the number of contact hours they delivered in the most recent academic terms (the "base year").

Paragraph (27) defines weighted outcome completions as the count of designated student outcomes that have been weighted by student characteristics. This provides the basis for the allocation of funding under the performance tier, which is further refined by the below definition paragraphs.

Paragraphs (3) - (5), (11), (18) - (20), and (23) provide definitions of credential types, or associated requirements, that may be eligible for purposes of performance tier funding. The definitions tie to paragraph (16), fundable credentials, which further refines what credential types, including associate, baccalaureate degrees, certain certificates, Occupational Skills Awards (OSAs), and Institutional Credential Leading to Licensure or Certification (ICLC) may receive funding. In alignment with H.B. 8, all fundable credentials will meet the definition of credential of value. The determination of "credential of value" for ICLCs is refined to provide semester credit hour (SCH) thresholds for the credential as these are new credential types collected from the community colleges and providing thresholds ensures the Coordinating Board is prioritizing credentials that are producing graduates who meet the state's workforce needs. The determination of "credential of value" for OSAs is aligned to the definition of OSA, which includes requirements that the credential meet workforce needs.

Paragraph (10) defines a credential of value as credentials that will provide a positive return-on-investment within 10 years (on average), such that cumulative earnings exceed initial investment, for baccalaureate, associate, and certificate degree programs. This definition is aligned with and implements the Coordinating Board's long range master plan for higher education by using data to determine whether a student is better off after earning the credential, inclusive of their costs of attendance, than a comparable student who earned only a high school diploma. The purpose is to incentivize institutions to strongly consider workforce needs and student's long term economic and social success in making decisions regarding program offerings, student services, and other key areas.

Paragraph (17) defines high demand fields in alignment with the recommendations of the last Community and Technical College Formula Advisory Committee. This list derives from an analysis of state and regional workforce trends based on higher education regions in the state. This list includes fields associated with an occupation on 7 of 10 regional lists of the top 25 occupations by projected 10-year growth and the fields associated with every region's top 5 occupations by projected 10-year growth. The list also includes any field previously funded as a "critical field" by the legislature in the fiscal year 2022-23 success point formula to help transition community colleges to the new methodology.

Paragraph (12) defines eligibility for a dual credit or dual enrollment fundable outcome to receive funding through the performance tier. The definition provides that all statutorily fundable SCHs of dual credit or dual enrollment may count towards the achievement of 15 SCHs applicable to an academic or workforce requirement at the postsecondary level. Aligning with statutory funding eligibility requirements increases the likelihood that these courses will result in meaningful progress towards postsecondary credentials while encouraging community colleges to transition to a system in which dual credit/enrollment students take a structured sequence of courses that enhances timely progress towards an academic or workforce credential. The Coordinating Board anticipates that this definition will be further refined as additional data become available in future years.

Paragraphs (24) and (25) define eligibility for a student's achievement of a structured co-enrollment or transfer fundable outcome. These outcomes may receive funding through the performance tier and the definitions align with the requirements in Section 130A.101, as added by H.B. 8.

Paragraphs (14) and (22) define formula and non-formula support, respectively, based on the method of determining the funding provided to the community college.

Rule 13.473, Base Tier Allotment, establishes the calculations used to determine Base Tier funding that the legislature entitled community colleges to receive under TEC, Sections 130A.051 - 130A.056. To summarize, Base Tier funding is calculated as Instruction and Operations (I&O) minus Local Share. If Local Share is greater than Instruction and Operations, then Base Tier funding is zero.

Specifically, Rule 13.473(b) establishes the Instruction and Operations funding amount, corresponding to TEC, Section 130A.052, as Contact Hour Funding plus the product of the Weighted Full Time Student Equivalents (Weighted FTSE) multiplied by Basic Allotment. The rule explicitly defines the calculations used to derive Full Time Student Equivalents based on contact hour and SCHs reported to the Coordinating Board by community college districts. Hours reported are weighted by student characteristics as instructed by TEC, Section 130A.054, at levels based on the higher cost of educating students with certain characteristics (e.g., adult learners are weighted the highest due to the higher cost of educating the student). In accordance with TEC, Section 130A.055, the rule defines Contact Hour Funding as the Institution's reported base year contact

hours, weighted by the average cost to provide each contact hour in each discipline as defined in the Report of Fundable Operating Expenses. The Basic Allotment amount and contact hour funding amount are derived based on the Fiscal Year 2024 appropriations for the Base Tier as provided by the General Appropriations Act for the 2024-25 Biennium, in accordance with TEC, Sections 130A.053 and 130A.055.

Rule 13.473 establishes Local Share as the amount of maintenance and operations ad valorem tax revenue generated by $0.05 per $100 of taxable property value in a college's taxing district plus the amount of tuition and fee revenue that would be generated by charging the average amount of tuition and fees charged by community colleges districts in the state of Texas to each in-district FTSE, in accordance with TEC, Section 130A.056. Specifically, the Coordinating Board will calculate estimated tax revenue for each district as the actual amount of current tax revenue collected in Fiscal Year 2022 multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five. This estimation takes into account that not all property taxes owed are able to be collected by the institutions due to delinquent or late collections over which the institutions have no control. The Coordinating Board will estimate tuition and fee revenue by summing 1) the average of tuition and fees charged by community colleges to in-district students in fiscal year 2021, as reported by the federal Integrated Postsecondary Education Data System, multiplied by non-dual credit or dual enrollment FTSEs In FY22 and 2) the amount of tuition set per SCH for the Financial Aid for Swift Transfer (FAST) program, multiplied by dual credit or dual enrollment SCHs in FY22. Using the average tuition and fee rate specific to in-district students avoids unduly penalizing colleges that have above-average percentages of in-district students and/or that provide substantial discounts to their in-district students, Using the two different tuition rates, depending on the type of student, provides further equity in the method of estimating tuition and fee revenue across the community college districts by avoiding an undue penalty on colleges participating in the FAST program and those with higher percentages of dual credit or dual enrollment students, regardless of their participation in FAST.

Rule 13.474, Performance Tier Funding, establishes the calculations used to determine Performance Tier Funding, which the Legislature entitled community colleges to receive under TEC, Section 130A.101. The rule lists those outcomes that merit performance funding and the student characteristics that garner added funding at levels in alignment with those set for the base tier funding pursuant to TEC, Section 130A.001.

The rule establishes values for the fundable outcomes, which are derived based on appropriations made in the 2024-25 General Appropriations Act for the Performance Tier strategy.

Funding is set $3,500 per outcome for transfer and structured co-enrollment fundable outcomes, certificates awarded in a high-demand field, and associate or baccalaureate degrees not in a high-demand field. The equal funding rate across these outcomes reflects the great benefit they confer to students and to the state as well as the importance of institutions' ability to impartially guide and assist students in pursuing different forms of valuable success.

Completion of dual credit or dual enrollment fundable outcomes are set at a lower amount, $1,700, due to the additional funding institutions will receive via participation in the FAST program; the fact that these outcomes do not involve conferral of a credential or enrollment in a baccalaureate program; and the tendency of these courses to be lower-division academic courses with below-average cost of delivery.

Across all credentials, high-demand fields receive higher funding rates to incentivize institutions to develop and grow programs in areas more closely aligned with the current and future workforce needs of the state.

Rule 13.475, Formula Transition Funding, establishes that after calculating the base tier and performance tier funding for each community college, the Coordinating Board shall ensure that a community college district does not receive less in formula funding in FY 2024 than it received in FY 2023 appropriations for formula funding (contact hours, success points, core operations, and bachelor's of applied technology funding) and need based supplements. The Coordinating Board judges this provision to be necessary to smooth the transition from the prior system of formula funding predominantly based on contact hour generation to the new system of performance-based funding. Including this provision ensures that no institution will experience as significant detrimental impact on its operations as the new system adjusts funding and moves to outcome-driven performance.

Rule 13.476, Payment Schedule, sets out both the payment schedule for non-formula support items and the payment schedule (three times per year) at which the Coordinating Board will make formula funding payments to each institution as authorized by TEC, Section 130.0031, as amended by Tex. H.B. 8, 88th Leg., R.S. (2023). The Coordinating Board shall pay all non-formula support item amounts to the institution by September 25th of a fiscal year, in accordance with the requirements in the 2024-25 General Appropriations Act (Article IX, Section 18.04 Contingency for House Bill 8(a)(4)). For FY24, the first payment is 50% of the total formula funding entitlement, 25% for the second payment and the final payment. Institutional stakeholders suggested that the Coordinating Board should make the first payment 50% in recognition that a college district's expenses are weighted towards the start of the fiscal year and to smooth the transition from the prior payment schedule that historically provided 48% of funding to a community college district by October 25

Rule 13.477, Close Out, establishes the final process the Coordinating Board shall undertake to finalize the prior fiscal year's formula funding for community colleges. The Coordinating Board shall review and verify distributions made to the community colleges in the prior fiscal year and, if necessary, adjust a community college's first payment of the next fiscal year to correct funding, as needed, in accordance with TEC, Section 130A.009. TEC, Section 130.0031, authorizes the Coordinating Board to make adjustments to the installment payments within the fiscal year to ensure the Coordinating Board delivers the correct funding to each institution. The Close Out process caps the final adjustment to payments that occur based on the outcomes, certified reported data, and funding made to each institution to the fiscal year. Subsequent to Close Out, the Coordinating Board will use the adjustment and overallocation process under Texas Administrative Code, subchapter R, of this chapter to make any further adjustments to funding that was owed for a Closed Out fiscal year. Specification of this process by rule ensures that each institution has notice of the Coordinating Board's determination that funding has been fully delivered for that year.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect

there may be fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the new public junior college finance system established by H.B. 8. Such ancillary fiscal implications may include the need to collect and report additional data in order to obtain additional outcome-based funding.

Fiscal implications of increased funding to institutions of higher education are funded as part of the new public junior college finance system in statute and the General Appropriations Act. The rules do not impose additional costs of compliance beyond those provided for in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, 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 the implementation of H.B. 8, which establishes a modern and dynamic finance system that ensures each public junior college has access to adequate state appropriations and local resources to support the education and training of the workforce. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will create or a government program, as required by House Bill 8;

(2) implementation of the rules will require the creation or elimination of employee positions, as required by House Bill 8;

(3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;

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

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

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

(8) the rules will affect this state's economy.

The new sections are adopted on an emergency bases under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and take other actions consistent with Texas Education Code, Chapter 61, Chapter 130, and Chapter 130A to implement Tex. H.B. 8, 88th Leg., R.S. (2023). In addition, Texas Education Code, Section 130.355, permits the Coordinating Board to establish rules for funding workforce continuing education.

The new sections affect Texas Education Code, Sections 28.0295, 61.003, 61.059, 130.003, 130.0031, 130.0034, 130.008, 130.085, 130.310, 130.352 and Chapter 130A.

§13.470. Purpose.

The purpose of this subchapter is to implement the Community College Finance Program authorized by Texas Education Code, Chapters 61, 130, and 130A.

§13.471. Authority.

The Coordinating Board adopts this subchapter pursuant to Texas Education Code, §130A.005, requiring the Coordinating Board to adopt rules to implement the Community College Finance Program created in Texas Education Code, Chapters 61, 130, and 130A.

§13.472. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Academically Disadvantaged--A designation that applies to postsecondary students who have not met the college-readiness standard in one or more Texas Success Initiative (TSI) assessments as provided by chapter 4, subchapter C, §4.57 of this title (relating to College Ready Standards), and who were not classified as either waived or exempt pursuant to chapter 4, subchapter C, §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).

(2) Adult Learner--A student aged 25 or older on September 1 of the fiscal year for which the applicable data are reported, in accordance with Coordinating Board data reporting requirements.

(3) Advanced Technical Certificate (ATC)--A certificate that has a specific associate or baccalaureate degree or junior level standing in a baccalaureate degree program as a prerequisite for admission. An ATC consists of at least 16 semester credit hours (SCH) and no more than 45 SCH and must be focused, clearly related to the prerequisite degree, and justifiable to meet industry or external agency requirements.

(4) Associate Degree--An academic associate degree as defined under Texas Education Code, §61.003(11), or an applied associate degree as defined under Texas Education Code, §61.003(12)(B).

(5) Baccalaureate Degree--A degree program that includes any grouping of subject matter courses consisting of at least 120 SCH which, when satisfactorily completed by a student, will entitle that student to an undergraduate degree from a public junior college.

(6) Base Tier Funding--The amount of state and local funding determined by the Board for each public junior college that ensures the college has access to a defined level of funding for instruction and operations.

(7) Base Year--The time period comprising the year of contact hours used for calculating the contact hour funding to public junior colleges. A base year includes certified contact hours reported in the Summer 1, Summer 2, and Fall of the prior calendar year and Spring of the current calendar year relative to September 1st of the current fiscal year.

(8) Basic Allotment--A dollar value per Weighted FTSE, as determined by the Legislature, based on appropriations made in that biennium's General Appropriations Act.

(9) Census Date--The date upon which a college may report a student in attendance for the purposes of formula funding, as specified in the Coordinating Board Management (CBM) manual for the year in which the funding is reported.

(10) Credential of Value--A credential earned by a student that would be expected to provide a positive return on investment. A positive return on investment is met when a typical student completing the credential is expected to earn cumulative wages greater than the cumulative median earnings of an average Texas high school graduate, plus recouping the net cost of attendance within ten years after earning the credential. This calculation shall include the student's opportunity cost, calculated as the difference between median earnings for a typical Texas high school graduate and typical earnings for students while

enrolled for four years for baccalaureate degree holders, two years for associate degree holders, and one year for holders of a Level 1 certificate, Level 2 certificate, or Advanced Technical Certificate. The Coordinating Board shall calculate the expected return on investment based on the data available to the agency for the funding year. The calculation shall include the most current available data for each program or a comparable program.

(11) Credentialing examination--A licensure, certification, or registration exam provided by a state or national agency or by professional organization.

(12) Dual Credit or Dual Enrollment Fundable Outcome--A student who has earned at least 15 SCH or the equivalent of state-funded dual credit or dual enrollment courses that apply toward an academic or workforce program requirement at the postsecondary level. For the purpose of this subchapter, the term "dual credit or dual enrollment fundable outcome" includes the following fundable courses taken for college credit by a high school student who has not yet received a high school diploma:

(A) Any course taken for dual credit that is within the core curriculum of the college that is providing the course;

(B) A course in a Coordinating Board-established field of study curriculum under Texas Education Code, §61.823, or program of study curriculum under Texas Education Code, §61.8235;

(C) Career and technical education courses that apply to a certificate or associate degree offered by the institution providing the credit;

(D) Foreign language courses;

(E) All courses taken by students enrolled in an approved Early College High School program, with the exception of the physical education courses taken by high school students for high school physical education credit; and

(F) A course taken for college credit only by a student who is also enrolled in high school but does not yet have a high school diploma.

(13) Economically Disadvantaged--A designation that applies to postsecondary students who received the federal Pell Grant under 20 U.S.C. §1070a.

(14) Formula Funding--The funding allocated by the Coordinating Board among all public junior colleges by applying provisions of the Texas Education Code, agency rule, and the General Appropriations Act to a sector-wide appropriation from the General Appropriations Act.

(15) Full-Time Student Equivalent (FTSE)--A synthetic measure of enrollment based on the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the time period in question.

(16) Fundable Credential--A Fundable Credential counts toward Weighted Outcome Completions as defined in paragraph (27) of this section. For the purpose of funding delivered in fiscal year 2024, a fundable credential is defined as any of the following, except that, for credentials under subparagraph (B) or (C) of this paragraph, if more than one credential that the institution awarded to a student includes the same contact hours, the institution may only submit one credential for funding under subparagraph (B) or (C) of this paragraph.

(A) Any of the following credentials awarded by an institution that meets the criteria of a credential of value as defined in paragraph (10) of this section using the methodology established for the most current fiscal year, that is otherwise eligible for funding, and the institution reported and certified to the Coordinating Board:

(i) An associate degree;

(ii) A baccalaureate degree;

(iii) A Level 1 or Level 2 Certificate; and

(iv) An Advanced Technical Certificate.

(B) An Occupational Skills Award awarded by an institution that the institution reported and certified to the Board during fiscal year 2023; or

(C) An Institutional Credential Leading to Licensure or Certification (ICLC) not included in subparagraph (B) of this paragraph and that the institution reported and certified to the Coordinating Board during fiscal year 2023, that meets one of the following criteria:

(i) The credential includes no fewer than 144 contact hours or nine (9) semester credit hours; or

(ii) The credential is awarded in a high demand field, as defined in Board rule, and includes no fewer than 80 contact hours or five (5) semester credit hours; or

(iii) A licensure or certification earned by a student who did not receive a credential if the student:

(I) earned the licensure or certification as the result of the student's successful passage of a credentialing examination for a licensure or certification, while or after being enrolled in one of the institution's Institutional Credentials Leading to Licensure or Certification (ICLC) programs that would qualify for funding under clauses (i) or (ii) of this subparagraph; and

(II) earned the licensure or certification not later than twelve months after the student's enrollment in the ICLC program for which the student earned the licensure or certification.

(17) High-Demand Fields--An academic discipline, delineated by the federal Classification of Instructional Program (CIP) code, that the Coordinating Board has approved for inclusion on a published list of High-Demand Fields, available at https://www.highered.texas.gov/our-work/supporting-our-institutions/community-college-finance/high-demand-fields/, based on their satisfaction of either:

(A) Inclusion on the list of Critical Fields employed for the purpose of determining formula funding allocations under the Student Success strategy in the 2022-2023 General Appropriations Act; or

(B) Appearing on the list of CIP codes resulting from the following methodology completed in Fall 2021:

(i) Extracting the top 25 occupations for each higher education region as ranked by their ten-year projected number of new openings, after having excluded those with an average wage less than the statewide median wage and those with a typical entry credential other than "Some college, no degree", "Postsecondary non-degree award", and "Associate degree", from the texaslmi.com website maintained by the Texas Workforce Commission;

(ii) Placing occupations appearing on at least seven of the ten resulting regional lists on a statewide list;

(iii) Adding to the statewide list any occupations appearing among the top five of one or more regional list but not yet on the statewide list; and

(iv) Generating a list of CIP codes populated by each four-digit CIP code associated with an occupation on the statewide list per the crosswalk promulgated by the National Center for Edu-

cation Statistics of the U.S. Department of Education, which as of the effective date of this rule is available at the following address: https://nces.ed.gov/ipeds/cipcode/post3.aspx?y=56.

(18) Institutional Credentials Leading to Licensure or Certification (ICLC)--A credential awarded by an institution upon a student's completion of a course or series of courses that represent the achievement of identifiable skill proficiency and leading to licensure or certification. This definition includes a credential that meets the definition of an Occupational Skills Award in all respects except that the program did not obtain the required Workforce Development Board approval.

(19) Level 1 Certificate--A certificate designed to provide the necessary academic skills and the workforce skills, knowledge, and abilities necessary to attain entry-level employment or progression toward a Level 2 Certificate or an Applied Associate Degree, with at least 50% of course credits drawn from a single technical specialty. A Level 1 Certificate must be designed for a student to complete in one calendar year or less time and consists of at least 15 semester credit hours and no more than 42 semester credit hours.

(20) Level 2 Certificate--A certificate consisting of at least 30 semester credit hours and no more than 51 semester credit hours. Students enrolled in Level 2 Certificates must demonstrate meeting college readiness standards set forth in chapter 4, subchapter C, §4.57 of this title (relating to College Ready Standards) and other eligibility requirements determined by the institution.

(21) Local Share--The amount determined to be the institution's contribution of local funds to the Instruction and Operations (I&O) amount for each public junior college. The amount consists of estimated ad valorem maintenance and operations tax revenue and tuition and fees revenue, as determined by the Board.

(22) Non-Formula Support Item--An amount appropriated by line item in the General Appropriations Act to a single public junior college or limited group of colleges for a specific, named purpose.

(23) Occupational Skills Award--A sequence of courses that meet the minimum standard for program length specified by the Texas Workforce Commission for the federal Workforce Innovation and Opportunity Act (WIOA) program (9-14 SCH for credit courses or 144-359 contact hours for workforce continuing education courses). An OSA must possess the following characteristics:

(A) The credential is TSI-waived under chapter 4, subchapter C, §4.54 of this title;

(B) The content of the credential must be recommended by an external workforce advisory committee, or the occupation must appear on the Local Workforce Development Board's Demand Occupations list;

(C) In most cases, the credential should be composed of Workforce Education Course Manual (WECM) courses only. However, non-stratified academic courses may be used occasionally if recommended by the external committee and if appropriate for the content of the credential;

(D) The credential complies with the Single Course Delivery guidelines for WECM courses; and

(E) The credential prepares students for employment in accordance with guidelines established for WIOA.

(24) Structured Co-Enrollment Fundable Outcome--A student who earns at least 15 semester credit hours at the junior college district in a Coordinating Board-recognized program structured through a binding written agreement between a general academic teaching institution and a community college. Under such a program, students will be admitted to both institutions and recognized as having matriculated to both institutions concurrently.

(25) Transfer Fundable Outcome--A student who enrolls in a general academic teaching institution, as defined in Texas Education Code, §61.003, after earning at least 15 semester credit hours from a single public junior college district during the period including the fiscal year in which they enroll at the general academic teaching institution and the four fiscal years prior.

(26) Weighted Full-Time Student Equivalent (Weighted FTSE or WFTSE)--A synthetic measure of enrollment equal to the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the time period in question, where the hours delivered to students with certain characteristics carry a value other than one.

(27) Weighted Outcomes Completion--A synthetic count of completions of designated student success outcomes where outcomes achieved by students with certain characteristics carry a value other than one. The synthetic count may also represent a calculation, such as an average or maximizing function, other than a simple sum.

§13.473. Base Tier Allotment.

(a) Board staff will calculate Base Tier funding for each public junior college district (district) as the greater of the Instruction and Operations (I&O) amount minus Local Share and zero.

(b) A district's I&O amount is the sum of the number of Weighted Full-Time Student Equivalents (Weighted FTSE) enrolled at the district multiplied by the Basic Allotment amount of $1,275 and the district's total Contact Hour Funding as determined by the Coordinating Board.

(1) Weighted FTSE for each district is the sum of the district's full-time student equivalents weighted for the student characteristics under §13.473(b)(1)(B) of this section and the scale adjustment as provided in Texas Education Code, §130A.054.

(A) For purposes of determining annual Weighted FTSE as a component of Fiscal Year (FY) 2024 formula funding under this section, a district's full-time student equivalents (FTSE) is equal to the sum of:

(i) the total semester credit hours in which for-credit students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for FY 2022, divided by 30; and

(ii) the total contact hours in which continuing education students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for FY 2022, divided by 900.

(B) The Coordinating Board shall additively weight the calculation of Weighted FTSE as follows:

(i) if a student is classified as economically disadvantaged during FY 2022, FTSE generated by that student shall have an additional value of 25%;

(ii) if a student is classified as academically disadvantaged during FY 2022, FTSE generated by that student shall have an additional value of 25%; and

(iii) if a student is classified as an adult learner during FY 2022, FTSE generated by that student shall have an additional value of 50%.

(C) The Coordinating Board calculates a district's scale adjustment weight as the greater of the difference between 5,000 and the number of FTSE as defined in §13.473(b)(1)(A) of this section multiplied by .40, and zero.

(2) For the purpose of calculating FY 2024 formula funding amounts, Coordinating Board staff will calculate Contact Hour Funding for a public junior college district by first multiplying the number of reported certified fundable contact hours generated by the district in each discipline during the 2023 Base Year, consisting of the Summer I and II 2022, Fall 2022, and Spring 2023 academic terms, by the average cost of delivery per contact hour for each discipline respectively as described in the Report of Fundable Operating Expenses for FY 2022 in accordance with subchapter R, §13.524(c) of this chapter (relating to Required Reporting) and summing across all disciplines. Contact hours attributable to students enrolled in a junior-level or senior-level course are weighed in the same manner as a lower division course in a corresponding field. That sum will then be multiplied by 21.3%, which is a rate derived from appropriations made for Base Tier Funding in the 2024-2025 General Appropriations Act, to calculate the district's Contact Hour Funding.

(c) For the purpose of calculating FY 2024 formula funding amounts, the Local Share for each public junior college district equals the sum of:

(1) the estimated amount of revenue that would have been generated by the district if it had assessed a $0.05 maintenance and operations ad valorem tax on each $100 of taxable property value in its taxing district, as reported under subchapter R, §13.524 of this chapter, which the Coordinating Board will calculate as the district's current tax collection for FY 2022 multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five; and

(2) the amount of tuition and fee revenue calculated as the sum of:

(A) the district's FY 2022 FTSE as defined in §13.473(b)(1)(A) of this section, except for semester credit hours derived from students enrolled in dual credit or dual enrollment courses, multiplied by $2,828, which is the FY 2021 statewide average of tuition and fees assessed to full-time students residing within the district of the public junior college they attend; and

(B) the total semester credit hours of dual credit or dual enrollment courses in which students were enrolled as of the census dates of all academic semesters or other academic terms that were reported in FY 2022, multiplied by $55, which is the dollar amount per dual credit semester credit hour determined by the Coordinating Board pursuant to Texas Education Code, §28.0095.

§13.474. Performance Tier Funding.

(a) Each public junior college district shall receive Performance Tier funding under Texas Education Code, Chapter 130A, Subchapter C. The Coordinating Board shall calculate a district's Performance Tier funding as the sum of Weighted Outcome Completions multiplied by the respective funded values of the outcomes.

(b) For the purposes of calculating formula funding amounts for Fiscal Year (FY) 2024, the Coordinating Board shall fund the Weighted Outcome Completions described below as follows:
Figure: 19 TAC §13.474(b)

(c) For the purposes of calculating formula funding amounts for FY 2024, the Coordinating Board shall additively weight the calculation of outcomes in §§13.473(b)(2), 13.473(b)(3)(D), 13.473(b)(3)(E), and 13.473(b)(3)(F) of this subchapter (relating to Base Tier Allotment), as follows to calculate Weighted Outcome Completions.

(1) When an outcome is achieved by a student classified as economically disadvantaged, that outcome shall have an additional value of 25%.

(A) For purposes of calculating economically disadvantaged for transfer and credential fundable outcomes, the student must be classified as economically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(B) For purposes of calculating economically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as economically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at either the community college or general academic institution.

(2) When an outcome is achieved by a student classified as academically disadvantaged, that outcome shall have an additional value of 25%.

(A) For purposes of calculating academically disadvantaged for transfer and credential fundable outcomes, the student must be classified as academically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(B) For purposes of calculating academically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as academically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(3) When an outcome is achieved by a student classified as an Adult Learner, that outcome shall have an additional value of 50%.

(A) For purposes of calculating an Adult Learner for a transfer fundable outcome, the student must be classified as an Adult Learner in the year of last enrollment at the community college district prior to the transfer to a general academic institution.

(B) For purposes of calculating an Adult Learner for a fundable credential, the student must be classified as an Adult Learner in the fiscal year in which the fundable credential was awarded.

(C) For purposes of calculating an Adult Learner for Structured Co-Enrollment Fundable Outcome, the student must be classified as an Adult Learner in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(d) For the purposes of calculating Weighted Outcome Completions for formula funding amounts for FY 2024, the Coordinating Board shall calculate the funded number of Weighted Outcome Completions as the greater of the average of the district's Weighted Outcome Completion counts for FY 2020, FY 2021, and FY 2022 and the district's count for FY 2022.

§13.475. Formula Transition Funding.

In FY 2024, for purposes of transitioning to the new formula model, if the sum of a public junior college district's Base and Performance Tier funding as calculated in §§13.473(a) and 13.474(a) of this subchapter (relating to Base Tier Allotment and Performance Tier Funding, respectively) would result in the district receiving less in General Revenue formula funding than the district received through the sum of appropriations made in the core operations strategy, student success strategy, contact hour funding strategy, and, if applicable, the need-based supplement and bachelor of applied technology strategies, as provided for

FY 2023 in the 2022-23 General Appropriations Act, then the Coordinating Board will add transitional funding in the amount of the difference to the district's formula funding for FY 2024.

§13.476. Payment Schedule.

(a) Non-Formula Support Items. For the purpose of distributing state appropriations to a public junior college district in Fiscal Year (FY) 2024, the Coordinating Board shall distribute the full amounts of all FY 2024 non-formula support items to the district to which they are appropriated in accordance with the provisions of the General Appropriations Act for 2024-2025 by September 25, 2023. The Coordinating Board shall recover any overallocation or adjust any installment required to comply with state law or chapter 13 of this title (relating to Financial Planning).

(b) Formula Funding Amounts: Fall. For the purpose of distributing state appropriations to a public junior college district in FY 2024, the Coordinating Board shall distribute to each district by October 15, 2023, one-half of the formula funding amount it determines the district may be entitled to receive in FY 2024 pursuant to the provisions of the General Appropriations Act for 2024-2025, Texas Education Code, and all other pertinent statutes and rules.

(c) Formula Funding Amounts: Spring. For the purpose of distributing state appropriations to a public junior college district in FY 2024, the Coordinating Board shall distribute to each district by February 15, 2024, one-quarter of the formula funding amount it determines the district may be entitled to receive in FY 2024 pursuant to the provisions of the General Appropriations Act for 2024-2025, Texas Education Code, and all other pertinent statutes and rules.

(d) Formula Funding Amounts: Summer. For the purpose of distributing state appropriations to a public junior college district in FY 2024, the Coordinating Board shall distribute to each district by June 15, 2024, one-quarter of the formula funding amount it determines the college may be entitled to receive in FY 2024 pursuant to the provisions of the General Appropriations Act for 2024-2025, Texas Education Code, and all other pertinent statutes and rules, and in odd-numbered years shall distribute the formula funding amount likewise determined as soon as is practicable after June 15 in accordance with the appropriations process.

(e) The Coordinating Board may modify any installment under this schedule as necessary to provide an institution with the amounts to which the institution is entitled under Texas Education Code, Chapters 130 and 130A, the General Appropriations Act, or chapter 13 of this title.

§13.477. Close Out.

(a) On October 1 of each year, the Coordinating Board shall close out the prior fiscal year (FY) by reviewing, reconciling, and verifying distributions of formula funding to public junior colleges in the prior fiscal year.

(1) As applicable, the Coordinating Board shall adjust a public junior college's first payment under §13.477(b) of this section by an amount necessary to deliver the correct funding owed to the public junior college under Texas Education Code, Chapters 130 and 130A, or this subchapter for the prior fiscal year.

(2) The Coordinating Board will determine the correct funding for a public junior college based on the final certified data reported by the institution that serves as the basis of formula funding for that year, as provided by this chapter.

(3) This close out process may result in additional or reduced funding to the college based on the reported data and funding delivered for the fiscal year that is being closed out.

(b) If the Commissioner of Higher Education in his or her sole discretion determines that an adjustment under §13.477(a) of this section will have a substantial negative impact on the operations of the institution or the education of students, the Coordinating Board may correct the institution's funding by recovering payments as an overallocation pursuant to subchapter R, §13.528(d)(1) or (2) of this chapter (relating to Recovery of Overallocated Funds). For the purpose of FY24, the Coordinating Board will not adjust formula funding for a public junior college for a fiscal year subsequent to close out except as set out in this section and subchapter R of this chapter (relating to State Public Junior College Finance Program Reporting, Audit, and Overallocation).

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 August 23, 2023.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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Expiration date: December 29, 2023
For further information, please call: (512) 427-6548

SUBCHAPTER Q. FINANCIAL AID FOR SWIFT TRANSFER (FAST) PROGRAM

19 TAC §§13.500 - 13.506

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter Q, §§13.500 - 13.506, concerning Financial Aid for Swift Transfer (FAST) Program.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning Sept. 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, these new sections will outline the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, tuition rate, funding formula, and the handling of overallocations, which are necessary to administer the FAST Program.

Rule 13.500 indicates the specific sections of the Texas Education Code (TEC) that provide the agency with authority to issue these rules, as well as the purpose of the FAST Program.

Rule 13.501 provides definitions for words and terms within FAST rules. The definitions are adopted to provide clarity for words and terms that are integral to the understanding and administration of the FAST rules. This section is adopted based on TEC. Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Rule 13.502 outlines the requirements that institutions must fulfill to participate in the FAST Program. The requirements are adopted to: (a) gather in one place both statutory requirements,

such as the requirement that an institution must meet the definition of institution of higher education outlined in TEC, Section 61.003, and rule requirements implementing the FAST Program; (b) clarify aspects of the statutory requirements, such as the institution's responsibility to provide dual credit coursework at no cost to eligible students attending high school in Texas school districts or charter schools; and (c) provide rules specific to requirements the Coordinating Board is adopting to ensure effective administration of the FAST Program, such as the requirement that each participating institution enter into an agreement with the Coordinating Board. This section is adopted based on TEC, Section 28.0095(j), which directs the Board to adopt rules as necessary to implement the FAST Program.

Rule 13.503 outlines the eligibility requirements that students must meet to allow an institution to enroll the student in dual credit coursework at no cost to the student under the FAST Program. The requirements are adopted to: (a) gather in one place the statutory requirements for the FAST Program, including the requirements related to a student's enrollment and their prior status as educationally disadvantaged; (b) clarify aspects of the statutory requirements, such as the student needing to be enrolled in and eligible for Foundation School Program funding at a high school in a Texas school district or charter school; and (c) provide rules specific to requirements the Coordinating Board is adopting to ensure effective administration of the FAST Program, such as the requirement that school districts and charter schools will fulfill their reporting requirements for the educationally disadvantaged status through notice to the Texas Education Agency. This section is adopted based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Rule 13.504 sets the FAST maximum tuition rate for the 2023-2024 academic year. The maximum tuition rate is set for the 2023-2024 via emergency rulemaking, based on a review of average dual credit tuition rates, to allow for the FAST Program to begin in the fall 2023 semester. Future rulemaking will establish the tuition rate for the 2024-2025 academic year and beyond. TEC, Section 28.0095(d), directs the Coordinating Board to prescribe the maximum tuition rate for the FAST Program in rule.

Rule 13.505 establishes the mechanisms by which the Coordinating Board will disburse funding to each participating institution to support their participation in the FAST Program, as well as the institutions' participation in the process. The adopted rule provides the frequency of disbursements to each institution; the way the disbursement amount will be calculated for each institution; the data that will be used to complete the calculation; and the way institutions will have the opportunity to review the calculation for accuracy. This section is adopted based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Rule 13.506 references the overallocation rules for the FAST Program. The rule acknowledges that the program is one aspect of the larger effort to provide funding to support institutions in their work to successfully educate students and is thus subject to the overallocation rules outlined in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter R. This section is adopted based on TEC, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the FAST program. However, participation in the program is voluntary for institutions of higher education. Fiscal implication of the potential for increased funding to institutions of higher education is funded as part of the FAST program in statute and the General Appropriations Act. Additional ancillary costs to institutions that choose to participate are assumed within the fiscal note for the legislation. The rules do not impose additional costs of compliance beyond those provided in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, 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 the increase in the number of educationally disadvantaged students who complete post-secondary coursework during high school, thus accelerating the attainment of post-secondary credentials necessary to support the Texas economy. Students and the state may realize additional benefits as the risk of credits that will not transfer to an institution of higher education is reduced. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the FAST program is voluntary. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will create a government program required by House Bill 8;

(2) implementation of the rules will require the creation of employee positions, as required by House Bill 8;

(3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;

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

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

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

The new section is adopted on an emergency basis under Texas Education Code, Section 28.0095, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the FAST Program.

The new section affects Texas Education Code, Sections 28.0095 and 48.308.

§13.500. Authority and Purpose.

(a) Unless otherwise noted in a section, the authority for these provisions is provided by Texas Education Code, §§28.0095 and 48.308.

(b) This subchapter establishes rules relating to the administration of the Financial Aid for Swift Transfer (FAST) Program. The program provides institutions with funding to support their ability to allow educationally disadvantaged students to enroll in dual credit coursework at no cost to the student.

§13.501. Definitions.

In addition to the words and terms defined in Texas Administrative Code, §13.1 of this chapter (relating to Definitions) the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In the event of conflict, the definitions in this subchapter shall control.

(1) Charter School--a public charter school authorized to operate under Texas Education Code, Chapter 12.

(2) Dual Credit Course--a course offered for joint high school and junior college credit under Texas Education Code, §130.008, or another course offered by an institution of higher education, for which a high school student may earn credit toward satisfaction of:

(A) a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree;

(B) a foreign language requirement at an institution of higher education;

(C) a requirement in the core curriculum, as that term is defined by Texas Education Code, §61.821, at an institution of higher education; or

(D) a requirement in a field of study curriculum developed by the coordinating board under Texas Education Code, §61.823.

(3) Educationally disadvantaged--as defined in Texas Education Code, §5.001(4), eligible to participate in the national free or reduced-price lunch program.

(4) Equivalent of a semester credit hour--16 contact hours.

(5) Program--the Financial Aid for Swift Transfer (FAST) Program.

§13.502. Eligible Institution.

(a) Any institution of higher education, as defined in Texas Education Code, §61.003, is eligible to participate in the Program.

(b) A participating institution may not charge students attending high school in a Texas school district or charter school tuition for dual credit courses in excess of the tuition rate outlined in §13.504 of this subchapter (relating to FAST Tuition).

(c) A participating institution must ensure that an eligible student incurs no cost for their enrollment in any dual credit course at the institution. This includes, but is not limited to, tuition, fees, books, supplies, or other course-related expenses. This subsection does not prohibit a participating institution from charging a school district for course-related expenses, other than tuition, for an eligible student.

(d) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner prior to being approved to participate in the program.

§13.503. Eligible Students.

(a) A student is eligible to enroll at no cost to the student in a dual credit course under the program if the student:

(1) is enrolled in and eligible for Foundation School Program funding at a high school in a Texas school district or charter school under the rules of the Texas Education Agency;

(2) is enrolled in a dual credit course at a participating institution of higher education; and

(3) was educationally disadvantaged at any time during the four school years preceding the student's enrollment in the dual credit course described by paragraph (2) of this subsection, as certified to the institution by the eligible student's school district or charter school, or other means authorized by rule.

(b) A school district's or charter school's notice to the institution regarding a student's status as educationally disadvantaged shall occur through the school district's or charter school's notice to the Texas Education Agency, unless otherwise provided by rule.

§13.504. FAST Tuition.

The maximum tuition rate prescribed for a dual credit course through this program is $55 per semester credit hour or equivalent of a semester credit hour in the 2023-2024 academic year.

§13.505. FAST Funding Formula.

(a) Frequency of Disbursements. The Coordinating Board will provide each participating institution with a disbursement for each fall, spring, and summer semester upon the certification of the institution's eligible enrollments. The Coordinating Board will combine enrollment periods under this subsection when a semester includes more than one enrollment period (for example, a Summer 1 and a Summer 2 session).

(b) Disbursement Calculation. Each disbursement will equal the amount outlined in §13.504 of this subchapter (relating to FAST Tuition) for the relevant semester multiplied by the number of semester credit hours or equivalent in which students who met the eligibility criteria in §13.503 of this subchapter (relating to Eligible Students) were enrolled in dual credit courses at the institution for the relevant semester.

(c) Data Sources. The source of data for the disbursement calculation will be reports collected by Board staff and certified by the institution for the relevant semester which provide an eligible student's dual credit enrollment in semester credit hours or their equivalent and the student's PEIM identifier, combined with data regarding educationally disadvantaged students, as reported by Texas Education Agency, unless otherwise provided by rule.

(d) Verification of Data. Board staff will share each semester's calculation with the participating institution for comment and verification prior to disbursement. The institution will be given ten business days, beginning the day of the notice's distribution, and excluding State holidays, to confirm that the calculation accurately reflects the data they submitted or to advise Board staff of any inaccuracies.

§13.506. Overallocation.

Funding provided to an institution under this subchapter shall be subject to subchapter R of this chapter (relating to State Public Junior College Finance Program Reporting, Audit, and Overallocation).

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.

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SUBCHAPTER R. STATE PUBLIC JUNIOR COLLEGE FINANCE PROGRAM REPORTING, AUDIT, AND OVERALLOCATION

19 TAC §§13.520 - 13.529

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules on an emergency basis in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter R, §§13.520 - 13.529, concerning the certification of compliance, required reporting, correction of errors, audit, and overallocation for the new State Public Junior College Finance Program.

The Coordinating Board adopts these rules on an emergency basis in accordance with Section 56, Tex. H.B. 8, 88th Leg., R.S. (2023), which permits the Coordinating Board to enact rules required for the state fiscal year beginning September 1, 2023, on an emergency basis. H.B. 8 waives the requirement for the agency to make the finding required by Texas Government Code, §2001.034(a).

Specifically, these new sections will establish rules that set out policies and procedures for public junior colleges to submit certifications of compliance and submit required reporting through various reporting collection mechanisms established by the Coordinating Board. The rules also describe how the Coordinating Board will conduct audits, review of required reporting for data errors, and correct those errors through either a payment of under-allocated funds or the recovery of over-allocated funds.

Rule 13.520 sets out the purpose of the subchapter, which is to establish definitions, certification of compliance, data reporting, audit, and correction of error requirements, as well as over-allocation and under-allocation procedures, necessary to implement the State Public Junior College Finance Program.

Rule 13.521 provides the authority for the chapter, which is established pursuant to Texas Education Code, §§28.0095, 61.035, 61.065, 130.003, and 130A.006-130A.009.

Rule 13.522 lists definitions used in the subchapter. These definitions establish consistent terminology within the subchapter and mirror commonly used definitions established elsewhere in the Coordinating Board's rules. The legislation establishing the State Public Junior College Finance Program permits the Coordinating Board to adopt rules as necessary to implement Texas Education Code, Chapters 61, 130, and 130A (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023), to be codified in Texas Education Code, §130A.005).

Rule 13.523 contains the policy and procedures necessary for public junior colleges to submit certifications of compliance with statute and rules. H.B. 8 requires public junior colleges to submit attestations of compliance, including compliance with all state laws and Coordinating Board rules, as a condition of receiving state funds (Sections 24 and 34, Tex. H.B. 8, 88th Leg., R.S. (2023), to be codified in Texas Education Code, §§61.063 and 130.003(b)). These sections of statute also provide for the Coordinating Board to establish the manner in which public junior colleges make this attestation. Rule 13.523 therefore contains deadlines and stipulates the content of the attestation, and provides for resolution in the event of unresolved audit findings, establishing clear guidelines for institutions to comply with statute.

Rule 13.524 describes the required financial and academic reporting for institutions to submit the data necessary for the Coordinating Board to administer the State Public Junior College Finance Program. The Coordinating Board collects data through a variety of established mechanisms: the Community College Annual Reporting and Analysis Tool, Annual Financial Report Reporting, the Report of Fundable Operating Expenses, Education Data Systems reporting, and through ad hoc reporting as necessary. The data from these tools provides a cornerstone of the financial modeling necessary to determine precise funding amounts for the public junior colleges. This rule describes the uses of data from required reporting and states the standards and review processes for these reporting mechanisms. This rule implements Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §130A.006), which states that the Coordinating Board may establish reporting requirements as necessary to administer the finance program.

Rule 13.525 establishes the process for the Commissioner of Higher Education (Commissioner) to review required reporting for errors and formally establish when a data reporting error resulting in a material impact in formula funding was made. Statute permits the Coordinating Board to review the accuracy of data reported to the Coordinating Board for any errors (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §130A.007)). This section establishes parameters and expectations for the methods the Coordinating Board will use to detect data errors. In addition, this section establishes the method used by the Commissioner to make a formal determination of a data reporting error requiring a funding adjustment, an important preliminary step to start off the processes for recovering overallocated funds or disbursing under-allocated funds.

Rule 13.526 provides for compliance monitoring and auditing of funds disbursed under the new finance model for public junior colleges. Texas Education Code, §61.035, provides for the agency to conduct compliance monitoring of funds allocated to all institutions of higher education, including public junior college. This section establishes parameters and expectations of internal audit offices at institutions for data collection and examination assistance by the internal audit offices as institutional resources allow. In addition, this section contains information regarding reporting of ongoing or completed audits involving funds administered or allocated by or data reported to the Coordinating Board.

Rule 13.527 states that institutions must retain records for a period of no less than seven years for purposes of Coordinating Board review. Coordinating Board staff chose this time period to mirror the timeline of seven years in the statute, which states that the Coordinating Board may not review expenditures made by junior colleges occurring seven or more years in the past (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §130A.009(e)).

Rule 13.528 lays out the process for the Coordinating Board to recover overallocated funds in the event a public community college has received more funding than was due. This section provides how the Coordinating Board will provide notice to institutions of an error finding and lays out an appeal process for institutions. This rule implements the recovery of overallocated funds

provision of H.B. 8 (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §130A.009)).

This rule establishes a process for institutions of higher education to receive notice and have the opportunity to submit relevant information to appeal to the Commissioner in the case where the Coordinating Board may need to make an adverse funding adjustment. The procedures established for overallocation under §13.528(d) ensure the Coordinating Board is accurately disbursing appropriated funds as intended by the Legislature, while also providing flexibility for the method used to recoup the funds. This flexibility includes providing an option to recover a sum in a lump payment under §13.528(d)(1)(B), or alternatively over a five-year timespan under §13.528(d)(2), as authorized by H.B. 8. The flexibility is intended to limit extreme adverse financial impacts to public junior colleges that might detrimentally impact institutional operations, local communities, and students served by the institution, while still carrying out the Coordinating Board's obligation to disburse appropriated funds according to law.

Rule 13.529 likewise establishes how the Coordinating Board may make a financial adjustment in light of finding that an institution was allocated less in funding than was due. H.B. 8 provides for the Commissioner to adjust funds for the purpose of accuracy (Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §13A.007)) and authorizes adjustment to installment under Texas Education Code, §130.0031. In addition, the General Appropriations Act provides that the Coordinating Board may make adjustments in the case of shortfall for the biennium (General Appropriations Act, Article IX, Contingency and Other Provisions, Section 18.04, Subsection 16 (2023)). The Coordinating Board intends to disburse appropriated funds with fidelity to appropriators' intent; this section allows for the agency to make institutions whole in the event of a shortfall due to a data reporting error or other error.

Paul Maeyaert, Interim Assistant Commissioner for Internal Audit and Compliance, has determined that for each of the first five years the sections are in effect there may be minimal fiscal implications for state or local governments as a result of enforcing or administering the rules, as required to implement the new community college finance program established by H.B. 8. The bill provides for the adjustment of funds relating to data reporting errors as well as a mechanism to recoup overallocated funds in Section 46, Tex. H.B. 8, 88th Leg., R.S. (2023) (to be codified in Texas Education Code, §§130A.007 and 130A.009). The rules do not impose additional costs of compliance beyond those provided in statute.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Paul Maeyaert, Interim Assistant Commissioner for Internal Audit and Compliance, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the establishment of rules to implement changes to the certification of compliance, required reporting, correction of errors, audit, and overallocation for the new community college finance system, as established in Tex. H.B. 8, 88th Leg., R.S. (2023). This subchapter will establish a framework to ensure appropriated funds for public junior colleges are correctly spent. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will create a government program, as required by House Bill 8;

(2) implementation of the rules will require the creation of employee positions, as required by House Bill 8;

(3) implementation of the rules may require an increase or decrease in future legislative appropriations to the agency, as provided in House Bill 8;

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

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will change the number of individuals subject to the rule; and

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

The new sections are adopted on an emergency basis under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules to implement and administer the Public Junior College State Finance Program.

The new sections affect Texas Education Code §§28.0095, 61.035, 61.065, 130.003, 130A.006-130A.009, and 130.0031.

§13.520. Purpose.

The purpose of this subchapter is to establish the definitions, certification of compliance, data reporting, audit, and correction of error requirements for institutions of higher education, as well as over-allocation and under-allocation procedures, under the State Public Junior College Finance Program (the Program). The subchapter further specifies the process for recovery of overallocated funds as required by statute. These provisions additionally apply to audit and overallocation of funds under the Financial Aid for Swift Transfer (FAST) Program.

§13.521. Authority.

The Coordinating Board adopts this subchapter pursuant to its authority under Texas Education Code, §§28.0095, 61.035, 61.063, 61.065, 130.003, and 130A.006-130A.009.

§13.522. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Audit--An engagement to audit the program conducted by the Coordinating Board's Internal Auditor and internal audit or compliance monitoring staff pursuant to either Texas Education Code, §§130A.006(4) or 61.035. This term may include a site visit, desk review, or examination of the institution's use of funds allocated by the Coordinating Board and data reported to the Coordinating Board. The term includes auditing undertaken to obtain evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(2) Census Date--As defined in subchapter P, §13.472, of this chapter (relating to Definitions).

(3) Chief Audit Executive--The Internal Auditor hired by the Coordinating Board to perform internal auditing and compliance monitoring on behalf of the Coordinating Board pursuant to Texas Education Code, Chapters 61, 130, and 130A.

(4) Compliance Monitoring--A risk-based audit and compliance function conducted by the Coordinating Board pursuant to either Texas Education Code, §§130A.006(4) or 61.035, for the purpose

of reviewing and assessing programmatic, legal, and fiscal compliance. This function may include conducting audits, site visits, desk reviews, or other examinations, to ensure that funds allocated or distributed by the Coordinating Board are allocated, distributed, and used in accordance with applicable law and Coordinating Board rule. The function includes obtaining evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(5) Data Reporting Error--An error in data or other information reported and certified by a public junior college to the Coordinating Board that the Commissioner of Higher Education in his or her discretion determines may result in a material impact in the formula funding a public junior college was entitled to or received.

(6) Desk Review--An administrative review by the Coordinating Board that is based on information reported by an institution of higher education or a private or independent institution of higher education, including supplemental information required by the Coordinating Board for purposes of compliance monitoring, except that the term does not include information or accompanying notes gathered by the Coordinating Board during a site visit.

(7) Full-Time Student Equivalent (FTSE)--As defined in subchapter P, §13.472, of this chapter.

(8) Funding Adjustment--Any increase or decrease in funding by the Coordinating Board to an institution of higher education based on an over- or under-allocation of funds.

(9) Over-allocation--The over-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments beyond what the institution is due.

(10) Site Visit--An announced or unannounced in-person visit by a representative of the Coordinating Board or its agent to an institution of higher education or a private or independent institution of higher education for the purposes of conducting an audit.

(11) Under-allocation--The under-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments less than what the institution was owed for the fiscal year.

§13.523. Certification of Compliance.

(a) A public junior college is not eligible to receive funds under this subchapter unless that public junior college submits a certification of compliance with the requirements of Texas Education Code, §130.003(b,) and as stated herein.

(b) A public junior college must submit an attestation via email to CTC@highered.texas.gov certifying to compliance with Texas Education Code, §130.003(b), to the Coordinating Board by August 1 of each year. The certification must be signed by the public junior college's president, or Chief Executive Officer, as applicable. The certification must certify the following:

(1) That the public junior college is currently in compliance with each provision of Texas Education Code, §130.003; and

(2) The public junior college has complied with all laws and Coordinating Board rules for the establishment and operation of a public junior college.

(c) If a junior college district has an unresolved or ongoing audit finding that the certifying official determines may preclude the district's certification under Texas Education Code, §130.003(b), the district shall disclose the finding(s) and provide an explanation of the finding(s) and proposed resolution.

(1) The Commissioner of Higher Education shall determine whether the junior college district can demonstrate that the district will be in compliance for the purpose of receiving a scheduled payment.

(2) Any payment that the Coordinating Board makes to an institution pursuant to this subchapter is subject to recovery or recoupment if the certifying official does not make the required certification for the fiscal year for which the certification was required.

§13.524. Required Reporting.

(a) Required Reporting. A public junior college must submit data through required reporting mechanisms established by the Coordinating Board. The Coordinating Board may use information obtained through required reporting for:

(1) calculating funding disbursed under this chapter;

(2) providing timely data and analyses to inform management decisions by the governing body of each public junior college district;

(3) administering or evaluating the effectiveness of programs; or

(4) auditing the program.

(b) Financial Reporting: The Community College Annual Reporting and Analysis Tool (CARAT) and Annual Financial Report (AFR) Reporting.

(1) Standards. Each public junior college district must submit their Annual Financial Report (AFR) for the preceding fiscal year by January 1. The public junior college must submit the AFR following the requirements provided in the Coordinating Board's Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, also known as the AFR Manual, for that fiscal year, in accordance with Texas Education Code, §61.065.

(2) Format. Each public junior college must report AFR data for each completed fiscal year as prescribed in the Community College Reporting and Analysis Tool (CARAT) by January 31 of the following fiscal year.

(3) Review Process. The Commissioner of Higher Education will update the AFR Manual, as required by Texas Education Code, §61.065. The AFR Manual will conform to Governmental Accounting Standards Board (GASB) statements and guidance.

(c) Financial Reporting: Report of Fundable Operating Expenses (RFOE).

(1) Standards. Each public junior college must report all instructional expenses from each completed fiscal year for each institutional discipline and unallocated administrative expenses as defined in the RFOE by January 31 of the following fiscal year.

(2) Coordinating Board staff shall use the data provided on expenses at public junior colleges to produce a study of costs for each instructional discipline each year. This study will review all expenses made by institutions for instruction and administration from all unrestricted sources of funds, including appropriated general revenue, tuition and fees, contract instruction, other educational and general revenue, and local tax revenue.

(d) Academic Reporting: Education Data System reporting.

(1) Standards. Each public junior college must use data standards established by the Commissioner of Higher Education to sub-

mit required information relating to the delivery of educational programs. The Commissioner of Higher Education shall adopt and publish annually data standards in official Coordinating Board publications, including through the Coordinating Board Management (CBM) Reporting and Procedures Manual for Texas Community, Technical, and State Colleges. The Coordinating Board will widely disseminate this publication, which will include:

(A) descriptions of the data collections and submission requirements;

(B) descriptions of data elements and the codes used to report them, including data used to calculate Full-Time Student Equivalent enrollments, Texas Success Initiative eligibility of students, student transfer, dual credit or dual enrollment, the number and type of credentials conferred, and other relevant student characteristics;

(C) detailed responsibilities of public junior colleges in connection to the data submission process, including each deadline for submission and resubmission; and

(D) descriptions of data submission requirements, including submission record layout specifications and data edit specifications.

(2) A public junior college may report a student in attendance on the approved course census date for the purpose of funding under this subchapter, in accordance with Texas Education Code, §130A.008.

(3) Review Process. The Commissioner of Higher Education shall review the CBM Reporting and Procedures Manuals annually. The Commissioner of Higher Education may approve changes to the data and reporting standards outside of the annual review process to expedite implementation of data collections and reporting.

(4) Certification. The reporting official for each public junior college must certify the accuracy of the report by a certification statement submitted to the Coordinating Board's Educational Data Center in accordance with the template and instructions provided in the CBM Reporting and Procedures Manual.

(e) Academic Reporting: Ad Hoc Reporting Requests. As necessary to implement this chapter, the Commissioner of Higher Education may determine the need for additional, limited, supplemental requests for data and information from public junior colleges. To the extent Ad Hoc Reporting Requests may determine or influence funding disbursements under this subchapter, the Coordinating Board shall require the reporting official or another Coordinating Board designated official for each public junior college to certify the accuracy of the information contained in the report.

§13.525. Commissioner Review of Required Reporting; Data Reporting Errors.

(a) The Commissioner of Higher Education at his or her discretion or upon recommendation of the Chief Audit Executive may direct Coordinating Board staff to review the accuracy of the data reported to the Coordinating Board by public junior colleges under this subchapter using any of the following methods or combination thereof:

(1) The Chief Audit Executive or Coordinating Board staff may conduct periodic file reviews, desk-reviews, site visits, or audits of the accuracy of the data and information submitted for funding purposes, including regular reviews of submitted data carried out through standard data management, supporting data, audits conducted under this subchapter, or as a result of any other audit. Upon identifying a data reporting error that may impact formula funding, Coordinating Board staff shall notify the Commissioner of Higher Education as soon as practicable.

(2) Upon receiving a notification from the Chief Audit Executive or Coordinating Board staff of a potential data reporting error, the Commissioner of Higher Education may:

(A) direct staff to continue to gather additional information;

(B) determine that the discrepancy does not rise to the level of a data reporting error as defined in this chapter due to the materiality impact of the error; or

(C) determine that the discrepancy rises to the level of a data reporting error that requires a funding adjustment due to the materiality impact of the error or the amount of overallocation or underallocation.

(b) The Coordinating Board may review and or require correction of a data reporting error that occurred not more than seven years prior to a review conducted by Coordinating Board staff.

(c) Upon the Commissioner of Higher Education's determination that the discrepancy constitutes a data reporting error requiring a funding adjustment, staff will notify the public junior college within 30 business days.

(d) The Commissioner of Higher Education may use any method provided in §§13.528 or 13.529 of this subchapter to make the necessary funding adjustments to correct an over- or under-allocation.

§13.526. Public Junior College Audits.

(a) A public junior college shall report financial and academic data to the Coordinating Board under §13.524 of this subchapter (relating to Required Reporting).

(b) The Chief Audit Executive may conduct compliance monitoring or audits of public junior colleges' compliance with Texas Education Code, Chapter 130A, the General Appropriations Act, and other related formula funding statutes.

(c) In conducting an audit or compliance monitoring under this section, the Coordinating Board may request the assistance of the internal audit office at an institution of higher education and private or independent institution of higher education, as institutional resources allow, to examine the institution's use of funds allocated by, and data reported to, the Coordinating Board.

(d) To avoid duplication of effort and assist the Coordinating Board in identifying risk, an internal auditor at an institution shall notify the Coordinating Board of any audits conducted by the institution's internal or external auditor involving funds allocated or administered by the Coordinating Board or data reported to the Coordinating Board.

§13.527. Records Retention.

An institution of higher education shall retain records related to financial and educational data and information reported to the Coordinating Board under Chapter 13 for a period of not less than seven years.

§13.528. Recovery of Overallocated Funds.

(a) If the Coordinating Board determines after closing out a fiscal year pursuant to subchapter P, §13.477, of this chapter (relating to Close Out), that a data reporting error or any other error resulted in an overallocation of funds to the institution, the Coordinating Board shall use any method authorized under statute or this rule to make a funding adjustment necessary to correct the over-allocation.

(b) The Coordinating Board shall notify the institution not later than 30 business days after the Commissioner of Higher Education makes a determination of a data reporting error under §13.525 of this subchapter (relating to Commissioner Review of Required

Reporting; Data Reporting Errors) or otherwise identifies an error requiring a funding adjustment to recover an overallocation. This notification must contain the amount of the overallocation and the basis for the determination.

(c) The institution may submit a written appeal to the Commissioner of Higher Education within 30 business days of receiving notification of an overallocation. The institution may attach any data or other written documentation that supports its appeal. The Commissioner of Higher Education shall review the appeal and determine in his or her sole discretion whether to affirm, deny, or modify the determination of overallocation within 30 business days of receipt. The Commissioner of Higher Education or Chief Audit Executive shall make an annual report of overallocation determinations to the Board.

(d) If the institution does not appeal or the Commissioner of Higher Education affirms the determination that an overallocation requiring a funding adjustment has occurred, the Coordinating Board shall recover an amount equal to the amount overallocated to the public junior college through one of the following methods:

(1) The Coordinating Board shall:

(A) withhold an amount equivalent to the overallocation by withholding from subsequent allocations of state funds for the current fiscal year as part of the close out of the current fiscal year; or

(B) request and obtain a refund from the public junior college during the current fiscal year an amount equivalent to the amount of the overallocation; or

(C) If the Commissioner of Higher Education in his or her sole discretion determines that the recovery of an overallocation in the current or subsequent fiscal year will have a substantial negative impact on the operations of the institution or the education of students, the Commissioner of Higher Education may instead recover the overallocation pursuant to subsection (d)(2) of this section.

(2) If the Commissioner of Higher Education in his or her sole discretion determines that an overallocation pursuant to paragraphs (1) or (2) of this subsection was the result of exceptional circumstances reasonably caused by statutory changes to Texas Education Code, Chapters 130 or 130A, and related reporting requirements, the Coordinating Board may recover the overallocation over a period not to exceed the subsequent five fiscal years.

(e) In addition to the recovery of an over-allocation under this section, the Commissioner of Higher Education may establish a corrective action plan for a public junior college that has received an overallocation of funds.

(f) If the public junior college fails to comply with an agreement to submit a refund established under this section, the Coordinating Board must report to the Comptroller of Public Accounts for recovery pursuant to Texas Education Code, Section 130A.009.

§13.529. Payment of Under-allocated Funds.

If the Commissioner of Higher Education determines that a data reporting error or any other error resulted in an under-allocation of funds, the Coordinating Board shall provide the funds to the institution pursuant to the close-out process in subchapter P, §13.477, of this chapter (relating to Close Out) or as otherwise authorized by 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 August 23, 2023.

TRD-202303138
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: September 1, 2023
Expiration date: December 29, 2023
For further information, please call: (512) 427-6548

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

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) proposes amendments to 1 Texas Administrative Code (TAC) Chapter 202, §§202.1, 202.23, 202.27, 202.73, and 202.77, concerning Information Security Standards. The proposed changes update the Texas Risk and Authorization Management Program (TX-RAMP) to incorporate necessary programmatic changes to address cybersecurity and stakeholder needs and expands upon the requirements for the information security assessment and report required by Texas Government Code §2054.515(c). The department also proposes a new section, §202.5, to create a singular location for all TX-RAMP requirements for the department and instructions on how vendors may adhere to the requirements of the program.

The department amends the title of 1 TAC Chapter 202, Subchapter A, to include "and Responsibilities" to reflect the expansion of elements within Subchapter A outside of definitions.

In §202.1, the department corrects certain grammatical errors within definitions used by 1 TAC Chapter 202. The department also revises the definition for "security incident" and creates a new definition for "local government."

In §202.23, for state agencies, and §202.73, for institutions of higher education, the department proposes amendments that establish the minimum requirements for an entity's biennial information security assessment as well as the method and time by which an entity must report its information security assessment to all statutorily-identified parties. In addition, the department proposes amendments that incorporate statutory admonishments to state agencies, local governments, and institutions of higher education on notifyng the department of the conclusion of a security incident within 10 days after the eradication, closure, and recovery from a security incident.

In §202.23, the department incorporates reporting requirements for local government security incidents as required by Senate Bill 271 [88th Legislature (Regular)]. The proposed local government security incident reporting mimic those requirements currently existing for state agencies.

In §202.27, for state agencies, and §202.77, for institutions of higher education, the department proposes amendments to streamline the sections to include only those items that are specific to the type of entity to which the subchapter is applicable.

The department proposes the creation of a new section, §202.5, concerning TX-RAMP. The Texas Legislature passed Senate Bill 475 (SB 475), which created the state risk and authorization management program, in the 87th Regular Session. Under TX-RAMP, the department must provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services. This requires the department to institute a number of regulatory requirements and procedures, both for itself and vendors who are seeking to become or are already TX-RAMP certified, that apply regardless of whether the customer is a state agency or institution of higher education. The proposed new section consolidates department and vendor requirements that are identical regardless of customer entity.

The proposed rule applies to state agencies, institutions of higher education, and, in limited scope as required by Senate Bill 271 [88th Legislative Session (Regular)], local governments, a term which may include approximately 1,100 rural communities as defined by Texas Government Code §2006.001(1-a). It does not apply to small business or micro-businesses. As a result, there is no economic impact on small businesses or micro-businesses as a result of enforcing or administering the amended rule as proposed.

There is no adverse economic impact to rural communities as a result of the proposed rule. Previously, rural communities who found themselves the victim of a security incident were required to address the recovery from the security incident on their own. With the passage of Senate Bill 271 [88th Legislative Session (Regular)], local governments, including rural communities as defined by by Texas Government Code §2006(1-a), are now required to comply with the same security incident reporting rules imposed upon state agencies and institutions of higher education. The department discussed this matter extensively with local governments prior to the passage of Senate Bill 271 [88th Legislative Session (Regular)] to ensure that there was no adverse impact to local governments, including rural communities. Rural communities must report their security incidents by either submitting a form through the department-hosted system or call to a specified department number to report a security incident. This allows rural communities to receive efficient and increased access to department support and resources where before rural communities may not have known who to contact during a security incident and not been able to receive department and/or statewide assistance in a timely fashion. Due to the lack of complexity associated with how rural communities are required to report security incidents and the benefits associated with reporting, there is no adverse economic impact to rural communities.

The department worked extensively with local government representatives during the legislative session and following the passage of Senate Bill 271 [88th Legislative Session (Regular)] to

ensure that the required rules imposed the least administrative burden upon local governments, including rural communities. As proposed, these rules are the least burdensome means of implementing the statutory requirements.

The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code §2054.121(c). DIR submitted the proposed amendments to the Information Technology Council of Higher Education for their review. DIR determined that there was no direct impact on institutions of higher education as a result of the proposed rules.

Nancy Rainosek, Chief Information Security Officer for the State of Texas, has determined that there will be no fiscal impact upon state agencies, institutions of higher education, and local government during the first five year period following the adoption of the proposed amendments. By permitting certain third-party certifications or attestations to partially satisfy TX-RAMP certification requirements at the department's discretion and realigning baseline levels to permit entities to assess required needs based upon an impact standard, the department has increased the overall effectiveness of the TX-RAMP rules and addresses the statutory requirement for the department to administer a robust and standardized security assessment program for cloud computing service providers. The department's creation of minimum requirements for the information security assessment that each state agency and institution of higher education must complete allows for a rigorous yet still customizable assessment that entities must complete at least biennially to determine the entity's overall security; many of the minimum requirements align with best practice standards already required for information security and, as such, do not result in a fiscal impact. Furthermore, local government's reporting of security incidents, in alignment with Senate Bill 271 [88th Legislative Session (Regular)] and the proposed rule requirements, allow local governments better access to department expertise and support, which not only results in no fiscal impact but may actually alleviate tension upon local government resources. There is no fiscal impact as a result of the proposed changes to state agencies, institutions of higher education, and local government. Ms. Rainosek has further determined that for each year of the first five years following the adoption of the amended 1 TAC Chapter 202, there are no anticipated additional economic costs to persons or small businesses required to comply with the amendments and proposed new rules.

Pursuant to Texas Government Code §2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed amendments. The agency has determined the following:

The proposed rules neither create nor eliminate a government program. The TX-RAMP program and the information security assessment and report were created by Senate Bill 475 during the 87th Legislature and the proposed rules merely administer and implement these required items.

Implementation of the proposed rules does not require the creation or elimination of employee positions. There are no additional employees required nor employees eliminated to implement the rule as amended.

Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. There is no fiscal impact as implementing the rule does not require an increase or decrease in future legislative appropriations.

The proposed rules do not require an increase or decrease in fees paid to the agency.

The proposed rules create a new rule section that consolidates existing duplicated requirements for the department and cloud computing services found in Subchapters B and C. A significant portion of the information contained in the new rule section previously existed in 1 TAC §§202.27 and 202.77.

The proposed rules do not repeal an existing regulation.

The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability. 1 TAC §202.23(e) as proposed now requires local governments to report security incidents as defined by rule. Senate Bill 271 [88th Legislative Session (Regular)] requires local governments to comply with all security incident reporting rules required of state agencies; the department has simply adapted its rule to incorporate this statutory requirement. Beyond the change mandated by Senate Bill 271 [88th Legislative Session (Regular)], the department has neither expanded nor reduced the overall applicability of these rules and, as such, the amount of individuals subject to the rule has not changed.

The proposed rules do not positively or adversely affect the state's economy. The proposed amendments to the TX-RAMP program, local government security incident reporting requirements, and minimum requirements necessary for an entity's information security assessment increase the security of governmental entities.

Written comments on the proposed rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rules.review@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §202.1, §202.5

The amendments are proposed pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code §2054.0593(c) , which requires the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program; Senate Bill 271 [88th Legislative Session (Regular)], which orders local government compliance with all department rules relating to security incident reporting; and Texas Government Code §2054.515(c), which requires the department to establish the requirements for the information security assessment and report in its administrative rules.

No other code, article, or statute is affected by this proposal.

§202.1. Applicable Terms and Technologies for Information Security Standards.

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

(1) Access--The physical or logical capability to view, interact with, or otherwise make use of information resources.

(2) Agency Head--The top-most senior executive with operational accountability for an agency, department, commission, board, office, council, authority, or other agency in the executive or judicial

branch of state government, that is created by the constitution or a statute of the state; or institutions of higher education, as defined in Texas Education Code §61.003.

(3) Application--As defined in Texas Government Code §2054.003(1).

(4) Availability--The security objective of ensuring timely and reliable access to and use of information.

(5) Cloud Computing--Has the same meaning as "Advanced Internet-Based Computing Service" as defined in Texas Government Code §2157.007(a).

(6) Cloud Computing Service--The [~~the~~] meaning assigned by Special Publication 800-145 issued by the United States Department of Commerce National Institute of Standards and Technology[~~,~~] as the definition existed on January 1, 2015.

(7) Confidential Information--Information that must be protected from unauthorized disclosure or public release based on state or federal law or other legal agreement.

(8) Confidentiality--The security objective of preserving authorized restrictions on information access and disclosure, including means for protecting personal privacy and proprietary information.

(9) Control--A safeguard or countermeasure, including devices, policies, procedures, techniques, or other measures, that are prescribed to meet security requirements of an information system or organization to preserve. Controls may include security features, management constraints, personnel security, and security of physical structures, areas, and devices.

(10) Control Standards Catalog--The document that provides state agencies and higher education institutions state specific implementation guidance for alignment with the National Institute of Standards and Technology (NIST) SP (Special Publication) 800-53 security controls.

(11) Custodian--See information custodian.

(12) Department--The Department of Information Resources.

(13) Destruction--The result of actions taken to ensure that physical and digital media cannot be reused as originally intended and that information is technologically infeasible or prohibitively expensive to recover.

(14) Electronic Communication--A process used to convey a message or exchange information via electronic media. It includes the use of electronic mail (email), Internet access, Instant Messaging (IM), Short Message Service (SMS), facsimile transmission, and other paperless means of communication.

(15) Encryption (encrypt or encipher)--The conversion of plaintext information into a code or cipher text using a variable called a "key" and processing those items through a fixed algorithm to create the encrypted text that conceals the data's original meaning.

(16) FedRAMP--Federal Risk and Authorization Management Program.

(17) Guideline--Recommended, non-mandatory controls that help support standards or serve as a reference when no applicable standard is in place.

(18) High Impact Information Resources--Information Resources whose loss of confidentiality, integrity, or availability could be expected to have a severe or catastrophic adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a severe degradation in or loss of mission capability to an extent and duration that the organization is not able to perform one or more of its primary functions;

(B) result in major damage to organizational assets;

(C) result in major financial loss; or

(D) result in severe or catastrophic harm to individuals involving loss of life or serious life-threatening injuries.

(19) Information--Any communication or representation of knowledge such as facts, data, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative, electronic, or audiovisual forms.

(20) Information Custodian--A department, agency, or third-party service provider responsible for implementing the information owner-defined controls and access to an information resource.

(21) Information Owner(s)--A person(s) with statutory or operational authority for specified information and responsibility for establishing the controls for its generation, collection, processing, dissemination, and disposal.

(22) Information Resources--As defined in Texas Government Code §2054.003(7).

(23) Information Resources Manager--As defined in Texas Government Code §2054.071.

(24) Information Security Program--The policies, standards, procedures, elements, structure, strategies, objectives, plans, metrics, reports, services, and resources that establish an information resources security function within an institution of higher education or state agency.

(25) Information System--A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information. An Information System normally includes, but is not limited to, hardware, software, network infrastructure, information, applications, communications, and people.

(26) Integrity--The security objective of guarding against improper information modification or destruction, including ensuring information non-repudiation and authenticity.

(27) ITCHE--Information Technology Council for Higher Education.

(28) Local Government - As defined by Texas Government Code §2054.003(9).

(29) [~~(28)~~] Low Impact Information Resources--Information resources whose loss of confidentiality, integrity, or availability could be expected to have a limited adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is noticeably reduced;

(B) result in minor damage to organizational assets;

(C) result in minor financial loss; or

(D) result in minor harm to individuals.

(30) [~~(29)~~] Moderate Impact Information Resources--Information Resources whose loss of confidentiality, integrity, or

availability could be expected to have a serious adverse effect on organizational operations, organizational assets, or individuals. Such an event could:

(A) cause a significant degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is significantly reduced;

(B) result in significant damage to organizational assets;

(C) result in significant financial loss; or

(D) result in significant harm to individuals that does not involve loss of life or serious life-threatening injuries.

(31) [~~(30)~~] Network Security Operations Center (NSOC)--As established by Texas Government Code §2059.101.

(32) [~~(31)~~] Nonconfidential Data--Information that is not required to be or may not be protected from unauthorized disclosure or public release based on state or federal law or other legal agreement.

(33) [~~(32)~~] Personal Identifying Information (PII)--A category of personal identity information as defined by Texas Business and Commerce Code §521.002(a)(1).

(34) [~~(33)~~] Procedure--Instructions to assist information security staff, custodians, and users in implementing policies, standards, and guidelines.

(35) [~~(34)~~] Program Manual--Program manual for the Texas risk and authorization management program.

(36) [~~(35)~~] Residual Risk--The risk that remains after security measures have been applied.

(37) [~~(36)~~] Risk--The effect on the entity's missions, functions, image, reputation, assets, or constituencies considering the probability that a threat will exploit a vulnerability, the safeguards already in place, and the resulting impact. Risk outcomes are a consequence of Impact levels defined in this section.

(38) [~~(37)~~] Risk Assessment--The process of identifying, evaluating, and documenting the probability and level of impact on an organization's mission, functions, image, reputation, assets, or individuals that may result from the operation of information systems. Risk Assessment incorporates threat and vulnerability analyses and considers mitigations provided by planned or in-place security controls.

(39) [~~(38)~~] Risk Management--The process of aligning information resources risk exposure with the organization's risk tolerance by either accepting, transferring, or mitigating risk exposures.

(40) [~~(39)~~] Security Assessment--The testing or evaluation of security controls to determine the extent to which the controls are implemented correctly, operating as intended, and producing the desired outcome with respect to meeting the security requirements for an information system or organization.

(41) [~~(40)~~] Security Incident--An incident that meets one of the requirements enumerated at Texas Government Code §2054.603(a)(1)(A) - (B). [~~An event that results in the accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, exposure, or destruction of information or information resources.~~]

(42) [~~(41)~~] Sensitive Personal Information--A category of personal identity information as defined by Texas Business and Commerce Code §521.002(a)(2).

(43) [~~(42)~~] Standards--Specific mandatory controls that help enforce and support the information security policy.

(44) [~~(43)~~] State-controlled data--Any and all data that is created, processed, or stored by a state agency.

(45) [~~(44)~~] StateRAMP--The risk and authorization management program, built upon the National Institute of Standards and Technology Special Publication 800-53 and modeled after the FedRAMP program, that provides state and local governments a common method for verification of cloud security.

(46) [~~(45)~~] Statewide Technology Centers--As defined in Texas Government Code §2054.375(2).

(47) [~~(46)~~] Threat--Any circumstance or event with the potential to adversely impact organizational operations (including mission, functions, image, or reputation), organizational assets, or individuals by the unauthorized access, destruction, disclosure, modification of information, and/or denial of service.

(48) [~~(47)~~] TX-RAMP--the Texas Risk [~~risk~~] and Authorization [~~authorization~~] Management [~~management~~] Program [~~program~~].

(49) [~~(48)~~] User of Information Resources--An individual, process, or automated application authorized to access an information resource in accordance with federal and state law, agency policy, and the information-owner's procedures and rules.

(50) [~~(49)~~] Vulnerability Assessment--A documented evaluation containing information described in Texas Government Code §2054.077(b), which includes the susceptibility of a particular system to a specific attack.

§202.5. Texas Risk and Authorization Management Program Responsibilities and Mandatory Standards.

(a) Mandatory Standards for Cloud Computing Services Subject to the Texas Risk and Authorization Management Program.

(1) The department shall define mandatory standards for Texas cloud computing services identified by subsection (a) of this section in the program manual published on the department's website. Revisions to this document will be executed in compliance with subsection (d) of this section.

(2) The mandatory standards established by the department shall include at least the below stated baseline standards for:

(A) TX-RAMP Level 1 Baseline - This baseline is required for cloud computing services that are subject to TX-RAMP certification and categorized by a state agency as Low Impact Information Resources; and

(B) TX-RAMP Level 2 Baseline - This baseline is required for cloud computing services that are subject to TX-RAMP and categorized by a state agency as Moderate or High Impact Information Resources.

(3) The department shall establish the categories and characteristics of cloud computing services that are subject to TX-RAMP requirements in the program manual published on the department's website pursuant to subsection (a)(1).

(b) Responsibilities of Cloud Computing Service Vendors:

(1) To be certified under TX-RAMP, a cloud computing service vendor shall:

(A) Provide evidence of compliance with TX-RAMP requirements for the cloud computing service as detailed by the program manual; and

(B) Demonstrate continuous compliance in accordance with the program manual.

(2) Primary contracting vendors who provide or sell cloud computing services subject to TX-RAMP, including resellers who provide or sell these services, shall present evidence of certification of the cloud computing service being sold to the state agency or institution of higher education in accordance with the program manual. Such certification is required for all cloud computing services subject to TX-RAMP being provided through the contract or in furtherance of the contract, including services provided through subcontractors or third-party providers.

(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.

(c) Responsibilities of the Department:

(1) Prior to publishing new or revised program standards as required by subsections (a) - (b) of this section, the department shall:

(A) solicit comment through the department's electronic communications channels for the proposed standards to be changed from the Information Resources Managers and Information Security Officers of state agencies and institutions of higher education and ITCHE; and

(B) after reviewing the comments provided, present the proposed program manual to the department's Board and obtain approval from the Board for publication.

(2) The department shall:

(A) perform assessments to certify cloud computing services provided by cloud computing vendors; and

(B) publish on the department's website the list of cloud computing products certified under TX-RAMP.

(d) Acceptance of External Assessments.

(1) The department shall accept a vendor's compliance with FedRAMP and StateRAMP authorizations in satisfaction of the [above] baselines established by subsection (a) once the department receives evidence of compliance with these programs.

(2) At the department's discretion, another state's risk and authorization management program certification may be accepted in satisfaction of the [above] baselines established by subsection (a) once certification is demonstrated by the vendor in alignment with program manual standards.

(3) At the department's discretion, the department may allow a third-party security assessment or third-party audit to satisfy certain mandatory program standards. A vendor may demonstrate satisfaction of certain mandatory program standards by submitting a third-party security assessment or third-party audit that the department has authorized to align with and satisfy these standards.

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

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Joshua Godbey
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 475-4552

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SUBCHAPTER B. INFORMATION SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §202.23, §202.27

The amendments are proposed pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code §2054.0593(c) , which requires the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program; Senate Bill 271 [88th Legislative Session (Regular)], which orders local government compliance with all department rules relating to security incident reporting; and Texas Government Code §2054.515(c), which requires the department to establish the requirements for the information security assessment and report in its administrative rules.

No other code, article, or statute is affected by this proposal.

§202.23. Security Reporting.

(a) [~~Agency Reporting.~~] Each Information Security Officer shall directly report to the agency head, at least annually, on the adequacy and effectiveness of information security policies, procedures, practices, compliance with the requirements of this chapter, and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the state agency risk management process; and

(3) state agency information security requirements and requests.

(b) Each state agency shall submit to the department a Biennial Information Security Plan in accordance with Texas Government Code §2054.133.

[~~(b) Report to the Department.~~]

[~~(1) Urgent Incident Report.~~]

[~~(A) Each state agency shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the agency Information Security Officer. Confirmed or suspected security incidents shall be reported to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:~~]

~~*(i)* propagate to other state systems;~~

~~*(ii)* result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;~~

~~*(iii)* involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information~~

as defined in Texas Business and Commerce Code §521.002(a)(2) and other applicable laws that may require public notification; or

(iv) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.

[(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapter 33 or Texas Penal Code Chapter 33A, the state agency shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.]

[(C) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state agencies as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency. Agencies shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.]

[(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. State agencies shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to a state agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency.]

[(3) Biennial Information Security Plan. Each state agency shall submit to the department a Biennial Information Security Plan in accordance with Texas Government Code §2054.133.]

(c) At least every two years, each state agency shall complete and submit an information security assessment in compliance with the requirements of Texas Government Code §2054.515 and this subsection.

(1) The agency's Biennial Information Security Plan may be considered to satisfy the information security assessment requirements of Texas Government Code §2054.515(a)(1) if the agency's Biennial Information Security Plan assesses:

(A) The security of the agency's information resources systems, network systems, and digital data storage systems;

(B) The measures in place to establish digital data security; and

(C) The vulnerabilities of the agency's information resources, including an evaluation determining how well the organization's security policies protect its data and information systems.

(2) To comply with Texas Government Code §2054.515(a)(2), a state agency must complete a data maturity assessment in alignment with the requirements established at 1 Texas Administrative Code §218.10.

(3) Upon completion of its information security assessment, a state agency shall report the results of its assessment to the department in the form and manner identified by the department. A state agency must comply with a request for the results of its assessment received from the Office of the Governor, Lieutenant Governor, or speaker of the House of Representatives.

(d) Each state agency shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Security incidents shall be promptly reported to immediate supervisors and the agency Information Security Officer.

(1) A state agency shall report security incidents to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:

(A) propagate to other state systems;

(B) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;

(C) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in Texas Business and Commerce Code §521.002(a)(2) and other applicable laws that may require public notification; or

(D) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.

(2) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapter 33 or Texas Penal Code Chapter 33A), the state agency shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(3) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state agencies as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency. Agencies shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(4) Ten days after the date of the eradication, closure, and recovery from a security incident, a state agency shall notify the department and the chief information security officer in the form and manner prescribed by the department of the security incident details and an analysis of the security incident cause.

(e) A local government shall report security incidents that are assessed by the entity to meet the criteria listed in subsection (d)(1) of this section to the department within 48 hours of discovery.

(1) A local government must submit its report of the security incident in the form and manner specified by the department.

(2) A local government is not required to report a security incident described by subsection (d) of this section where statute expressly states that compliance with the department reporting requirements is excluded for a security incident of that type.

(3) Ten days after the date of the eradication, closure, and recovery from a security incident, a local government shall notify the department and the chief information security officer in the form and manner prescribed by the department of the security incident details and an analysis of the security incident cause.

§202.27. Texas Risk and Authorization Management Program for State Agencies.

[(a) Mandatory Standards. Mandatory standards for Texas cloud computing services identified by subsection (b)(1) of this section shall be defined by the department in the program manual published on the department's website. Revisions to such document will be executed in compliance with subsection (d) of this section.]

[(b) Cloud Computing Standards Subject to the Texas Risk and Authorization Management Program. The standards required by subsection (a) of this section shall include the below stated baseline standards for:]

[(1) TX-RAMP Public Controls Baseline (TX-RAMP Level 1) - This baseline is required for cloud computing services that:]

[(A) store, process, or transmit nonconfidential data of a state agency; or]

[(B) host low impact information resources.]

[(2) TX-RAMP Confidential Controls Baseline (TX-RAMP Level 2) - This baseline is required for cloud computing services that:]

[(A) store, process, or transmit confidential data of a state agency; and]

[(B) host moderate impact information resources or high impact information resources.]

[(c) Responsibilities of Cloud Computing Service Vendors.]

[(1) To be certified under the TX-RAMP program, a cloud computing service vendor shall:]

[(A) Provide evidence of compliance for information they are storing, processing, or transmitting as detailed by the program manual; and]

[(B) Demonstrate continuous compliance in accordance with the program manual.]

[(2) Primary contracting vendors, including resellers, who provide or sell cloud computing services to state agencies shall present evidence of certification of the cloud computing service being sold in accordance with the program manual. Such certification is required for all cloud computing services being provided through the contract or in furtherance of the contract, including services provided through subcontractors or third-party providers.]

[(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.]

[(d) Responsibilities of the Department.]

(1) [Responsibilities of the Department in Developing Updates to the Program Manual. Prior to publishing new or revised program standards as required by subsections (a) - (d) of this section, the department shall:]

(A) [solicit comment through the department's electronic communications channels for proposed standards from the Information Resources Managers, ITCHE, and Information Security Officers of agencies and institutions of higher education at least 30 days prior to publication of proposed program manual; and

(B) [after reviewing comments provided during the comment period described by section (1)(A) of this subsection, present the proposed program manual to the department's Board and obtain approval from the Board for publication.]

(2) [Responsibilities of the Department for Certifying Vendor's Cloud Computing Products and Services. The department shall:]

(A) [perform reviews to certify cloud computing services provided by cloud computing vendors; and]

(B) [publish on the department's Internet website the list of cloud computing products certified under TX-RAMP.]

[(e) Responsibilities of a State Agency Contracting for Cloud Computing Services.] A state agency contracting for cloud computing services that store, process, or transmit data of the state agency shall:

(1) confirm that vendors contracting with the state agency to provide cloud computing services for the state agency are certified through TX-RAMP prior to entering or renewing a cloud computing services contract on or after January 1, 2022; and

(2) require a vendor contracting with the state agency to provide cloud computing services for the state agency that are subject to the state risk and authorization management program to maintain TX-RAMP compliance and certification throughout the term of the contract.

[(f) Acceptance of Other RAMP Certifications:]

[(1) FedRAMP and StateRAMP certifications shall be accepted in satisfaction of the above baselines once demonstrated by the vendor.]

[(2) At the department's discretion, another state's risk and authorization management program certification may be accepted in satisfaction of the above baselines once certification is demonstrated by the vendor in alignment with program manual standards.]

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

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Joshua Godbey
General Counsel
Department of Information Resources
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For further information, please call: (512) 475-4552

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SUBCHAPTER C. INFORMATION SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §202.73, §202.77

The amendments are proposed pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code §2054.0593(c) , which requires the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program; Senate Bill 271 [88th Legislative Session (Regular)], which orders local government compliance with all department rules relating to security incident reporting; and Texas Government Code §2054.515(c), which requires the department to establish the requirements for the information security assessment and report in its administrative rules.

No other code, article, or statute is affected by this proposal.

§202.73. Security Reporting.

(a) [~~Institution Reporting.~~] Each Information Security Officer shall directly report to the agency head, at least annually, on the adequacy and effectiveness of information security policies, procedures, practices, compliance with the requirements of this chapter, and:

(1) effectiveness of current information security program and status of key initiatives;

(2) residual risks identified by the institution of higher education risk management process; and

(3) institution of higher education information security requirements and requests.

(b) Each institution of higher education shall submit to the department a Biennial Information Security Plan in accordance with Texas Government Code §2054.133.

[~~(b) Report to the Department.~~]

[~~(1) [Urgent Incident Report.~~]

[~~(A) Each state institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Confirmed or suspected incidents shall be reported to immediate supervisors and the institution of higher education Information Security Officer. Confirmed or suspected security incidents shall be reported to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:~~]

[~~(i)~~ ~~propagate to other state systems;~~]

[~~(ii)~~ ~~result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;~~]

[~~(iii)~~ ~~involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in Texas Business and Commerce Code §521.002(a)(2) and other applicable laws that may require public notification; or~~]

[~~(iv)~~ ~~be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.~~]

[~~(B) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapters 33 or 33A, the institution of higher education shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.~~]

[~~(C) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state institutions of higher education as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education. Institutions of higher education shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.~~]

[~~(2) Monthly Incident Report. Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Institutions of higher education shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education.~~]

[~~(3) Biennial Information Security Plan. Each state institution of higher education shall submit to the department a biennial Information Security plan, in accordance with Texas Government Code §2054.133.~~]

(c) At least every two years, each institution of higher education shall complete and submit an information security assessment in compliance with the requirements of Texas Government Code §2054.515 and this subsection.

(1) The institution of higher education's Biennial Information Security Plan may be considered to satisfy the information security assessment requirements of Texas Government Code §2054.515(a)(1) if the institution's Biennial Information Security Plan assesses:

(A) The security of the institution's information resources systems, network systems, and digital data storage systems;

(B) The measures in place to establish digital data security; and

(C) The vulnerabilities of the institution's information resources, including an evaluation determining how well the organization's security policies protect its data and information systems.

(2) To comply with Texas Government Code §2054.515(a)(2), an institution of higher education must complete a data maturity assessment in alignment with the requirements established at 1 Texas Administrative Code §218.10.

(3) Upon completion of its information security assessment, an institution of higher education shall report the results of its assessment to the department in the form and manner identified by the department. An institution of higher education must comply with a request for the results of its assessment received from the Office of the Governor, Lieutenant Governor, or speaker of the House of Representatives.

(d) Each state institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident (e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks). Confirmed or suspected incidents shall be reported to immediate supervisors and the institution of higher education Information Security Officer.

(1) An institution of higher education shall report security incidents to the department within 48 hours of discovery in the form and manner specified by the department where the security incident is assessed to:

(A) propagate to other state systems;

(B) result in criminal violations that shall be reported to law enforcement in accordance with state or federal information security or privacy laws;

(C) involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as de-

fined in Texas Business and Commerce Code §521.002(a)(2) and other applicable laws that may require public notification; or

(D) be an unauthorized incident that compromises, destroys, or alters information systems, applications, or access to such systems or applications in any way.

(2) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Texas Penal Code Chapters 33 or 33A, the institution of higher education shall contact law enforcement, as required, and the security incident shall be investigated, reported, and documented in accordance with the legal requirements for handling of evidence.

(3) Depending on the nature of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams shall continue to report information to the department as it is collected. The department shall instruct state institutions of higher education as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education. Institutions of higher education shall ensure that compliant reporting requirements are included in any contract where incident reporting may be necessary.

(4) Ten days after the date of the eradication, closure, and recovery from a security incident, an institution of higher education shall notify the department and the chief information security officer in the form and manner prescribed by the department of the security incident details and an analysis of the security incident cause.

§202.77. Texas Risk and Authorization Management Program for Institutions of Higher Education.

~~[(a) Mandatory Standards. Mandatory standards for Texas cloud computing services identified by subsection (b)(1) of this section shall be defined by the department in the program manual published on the department's website. Revisions to such document will be executed in compliance with subsection (d) of this section.]~~

~~[(b) Cloud Computing Standards Subject to the Texas Risk and Authorization Management Program. The standards required by subsection (a) of this section shall include the below stated baseline standards for:]~~

~~[(1) TX-RAMP Public Controls Baseline (TX-RAMP Level 1) - This baseline is required for cloud computing services that:]~~

~~[(A) store, process, or transmit nonconfidential data of an institution of higher education; or]~~

~~[(B) host low impact information resources.]~~

~~[(2) TX-RAMP Confidential Controls Baseline (TX-RAMP Level 2) - This baseline is required for cloud computing services that:]~~

~~[(A) store, process, or transmit confidential data of an institution of higher education; and]~~

~~[(B) host moderate impact information resources or high impact information resources.]~~

~~[(c) Responsibilities of Cloud Computing Service Vendors.]~~

~~[(1) To be certified under the TX-RAMP program, a cloud computing service vendor shall:]~~

~~[(A) Provide evidence of compliance for information they are storing, processing, or transmitting as detailed by the program manual; and]~~

~~[(B) Demonstrate continuous compliance in accordance with the program manual.]~~

~~[(2) Primary contracting vendors, including resellers, who provide or sell cloud computing services to institutions of higher education shall present evidence of certification of the cloud computing service being sold in accordance with the program manual. Such certification is required for all cloud computing services being provided through the contract or in furtherance of the contract, including services provided through subcontractors or third-party providers.]~~

~~[(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.]~~

~~[(d) Responsibilities of the Department in Developing Updates to the Program Manual. Prior to publishing new or revised program standards as required by subsections (a) - (d) of this section, the department shall:]~~

~~[(1) solicit comment through the department's electronic communications channels for proposed standards from the Information Resources Managers, ITCHE, and Information Security Officers of agencies and institutions of higher education at least 30 days prior to publication of proposed program manual; and]~~

~~[(2) after reviewing comments provided during the comment period described by paragraph (1) of this subsection, present the proposed program manual to the department's Board and obtain approval from the Board for publication.]~~

~~[(e) Responsibilities of an Institution of Higher Education Contracting for Cloud Computing Services.]~~ An institution of higher education contracting for cloud computing services that store, process, or transmit data of the institution of higher education shall:

(1) confirm that vendors contracting with the institution of higher education to provide cloud computing services for the institution of higher education are certified through TX-RAMP prior to entering or renewing a cloud computing services contract on or after January 1, 2022; and

(2) require a vendor contracting with the institution of higher education to provide cloud computing services for the institution of higher education that are subject to the state risk and authorization management program to maintain program compliance and certification throughout the term of the contract.

~~[(f) Acceptance of Other RAMP Certifications.]~~

~~[(1) FedRAMP and StateRAMP certifications shall be accepted in satisfaction of the above baselines once demonstrated by the vendor.]~~

~~[(2) At the department's discretion, another state's risk and authorization management program certification may be accepted in satisfaction of the above baselines once certification is demonstrated by the vendor in alignment with program manual requirements.]~~

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

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Joshua Godbey
General Counsel
Department of Information Resources
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CHAPTER 218. DATA GOVERNANCE AND MANAGEMENT

The Texas Department of Information Resources (department) proposes the creation of 1 Texas Administrative Code (TAC) Chapter 218, Subchapter A, §§218.1 - 218.3, Subchapter B, §218.10, and Subchapter C, §218.20. This proposed chapter addresses the requirements for a state agency as defined by Texas Government Code Chapter 2054 to conduct an information security assessment of the agency's data governance program.

Within Subchapter A, the department proposes the creation §§218.1 - 218.3. Section 218.1 introduces any specialized definitions required by the rule, which includes the terms "data governance program," "data management officer," and "data maturity assessement." Section 218.2 defines the term state agency. Section 218.3 defines the term institution of higher education.

The department proposes the creation of subchapter B, §218.20, for state agencies, and subchapter C, §218.30, for institutions of higher education. These sections establish the minimum requirements that an entity's information security assessment of its data governance program as required by Texas Government Code § 2054.515(a)(2) must meet to be considered compliant with the statutory requirement. In §218.30, the department also proposes the clarification that the data maturity assessment is considered a statutory component of the information security assessment, which is information security standard, and, as such, public junior colleges must comply with this requirement subject to Texas Government Code § 2054.0075.

There is no economic impact on rural communities or small businesses as a result of enforcing or administering the new rules as proposed.

The new rules in this chapter apply only to state agencies and institutions of higher education.

The assessment of the impact of the proposed changes on institutions of higher education was prepared in consultation with the Information Technology Council for Higher Education (ITCHE) in compliance with Texas Government Code § 2054.121(c). DIR submitted the proposal to the Information Technology Council of Higher Education for their review. DIR determined that there was no direct impact on institutions of higher education as a result of the proposed rules.

Neil Cooke, the Chief Data Officer, has determined that there will be no fiscal impact upon state agencies, institutions of higher education, and local governments during the first five year period following the adoption of the proposed new rules. State agencies are required by Texas Government Code § 2054.515(a) to complete a biennial information security assessment of, among other elements, its data governance program; the proposed rules simply establish the minimum necessary components of this data maturity assessment. This allows for a rigorous data maturity assessment that still permits any entity-specific customizability and scaling to address its unique data governance program. As such, the proposed chapter does not result in a fiscal impact to state agencies, institutions of higher education, or local governments. Mr. Cooke has further determined that for each year of the first five years following the adoption of the new 1 TAC Chapter 218, there are no anticipated additional economic costs to persons or small businesses required to comply with the proposed new rules.

Pursuant to Texas Government Code § 2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed new rules. The agency has determined the following:

The proposed rules neither create nor eliminate a government program. Texas Government Code § 2054.515(a)(2) requires state agencies complete the information security assessment and report, including the data maturity assessment. The proposed rules merely administer the minimum requirements for this assessment.

Implementation of the proposed rules does not require the creation or elimination of employee positions. There are no additional employees required nor employees eliminated to implement the rule as proposed.

Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. There is no fiscal impact as implementing the rule does not require an increase or decrease in future legislative appropriations.

The proposed rules do not require an increase or decrease in fees paid to the agency.

The proposed rules create a new rule chapter that clarifies the minimum requirements for the state agency data maturity assessment mandated by Texas Government Code § 2054.515(a)(2). The department previously addressed items referential to the data maturity assessment in 1 Texas Administrative Code Chapter 202; the department proposes this new chapter in alignment with the rulemaking authority granted by Texas Government Code § 2054.515 to streamline the information security assessment process and alleviate confusion regarding data maturity assessment requirements.

The proposed rules do not repeal an existing regulation.

The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability. Texas Government Code § 2054.515 requires state agencies to complete the information security assessment, which includes the data maturity assessment; Texas Government Code Chapter 2054 establishes the parameters of the term "state agency," which identifies the entities that are subject to this chapter's requirements. Public junior colleges are not excepted from information security standards established by the department. Tex. Gov't Code § 2054.0075. These information security standards are established, among other places, in 1 TAC Chapter 202. To the extent that the data security maturity assessment is a statutory component of the information security assessment and the information security assessment requirements reside in 1 TAC Chapter 202, public junior colleges are subject to this requirement.

The proposed rules do not positively or adversely affect the state's economy. The creation of rules establishing minimum requirements for an entity's data maturity assessment ensures that state agencies are scrutinizing their data governance pro-

gram to ensure rigorous security standards and alignment with best practices.

Written comments on the proposed rules may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rules.review@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

1 TAC §§218.1 - 218.3

The new rules are proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 2054.515(a)(2), which admonishes the department to establish the data maturity assessment requirements by rule.

No other code, article, or statute is affected by this proposal.

§218.1. Definitions.

(a) Data Governance Program - the program established pursuant to the requirements of Texas Government Code § 2054.137(b)(2).

(b) Data Management Officer - the full-time employee designated by the state agency or institution of higher education to fulfill the statutory duties required by Texas Government Code § 2054.137(b). A state agency or institution of higher education is only required to designate such an employee to the extent that it meets the statutory requirement to do so.

(c) Data Maturity Assessment - the assessment of an agency's data governance program required by Texas Government Code § 2054.137(b)(2) that is conducted by the designated data management officer.

§218.2. State Agency.

A department, commission, board, office, council, authority, or other agency in the executive or judicial branch of state government, other than an institution of higher education, that is created by the constitution or a statute of this state.

§218.3. Institution of Higher Education.

A university system or institution of higher education as defined by Texas Education Code § 61.003.

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

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Joshua Godbey
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Department of Information Resources
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SUBCHAPTER B. DATA GOVERNANCE AND MANAGEMENT FOR STATE AGENCIES

1 TAC §218.10

The new rule is proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 2054.515(a)(2), which admonishes the department to establish the data maturity assessment requirements by rule.

No other code, article, or statute is affected by this proposal.

§218.10. Data Maturity Assessment.

(a) A state agency shall conduct a data maturity assessment by November 15 of each even-numbered year, December 1 of the year in which the agency completes the assessment, or the 60th day after the agency completes the assessment, whichever comes first.

(b) The data maturity assessment shall include at least the below elements:

(1) Data Architecture;

(2) Data Analytics;

(3) Data Governance and Standardization;

(4) Data Management and Methodology;

(5) Data Program Management and Change Control;

(6) Data Quality;

(7) Data Security and Privacy;

(8) Data Strategy and Roadmap;

(9) Master Data Management; and

(10) Metadata Management.

(c) State agencies may complete their data maturity assessment through a method identified by the department or by using their own tool that includes the elements required by subsection (b) of this section.

(d) The data maturity assessment completed pursuant to this subsection addresses the requirement to review an agency's data governance program found in Texas Government Code § 2054.515(a)(2).

(e) To comply with Texas Government Code § 2054.515(a), a state agency must complete a data maturity assessment that is compliant with this section in addition to addressing all information security assessment requirements enumerated in 1 Texas Administrative Code Chapter 202.

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

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Joshua Godbey
General Counsel
Department of Information Resources
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For further information, please call: (512) 475-4552

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SUBCHAPTER C. DATA GOVERNANCE AND MANAGEMENT FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §218.20

The amendments are proposed pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 2054.515(a)(2), which admonishes the department to establish the data maturity assessment requirements by rule.

No other code, article, or statute is affected by this proposal.

§218.20. Data Maturity Assessment.

(a) An institution of higher education shall conduct a data maturity assessment by November 15 of each even-numbered year, December 1 of the year in which the institution of higher education completes the assessment, or the 60th day after the institution of higher education completes the assessment, whichever comes first.

(b) An institution of higher education's data maturity assessment shall include at least the below elements:

(1) Data Architecture;

(2) Data Analytics;

(3) Data Governance and Standardization;

(4) Data Management and Methodology;

(5) Data Program Management and Change Control;

(6) Data Quality;

(7) Data Security and Privacy;

(8) Data Strategy and Roadmap;

(9) Master Data Management; and

(10) Metadata Management.

(c) Institutions of higher education may complete their data maturity assessment through a method identified by the department or by using their own tool that includes the elements required by subsection (b) of this section.

(d) The data maturity assessment completed pursuant to this subsection addresses the requirement to review an institution of higher education's data governance program found at Texas Government Code § 2054.515(a)(2).

(e) To comply with Texas Government Code § 2054.515(a), an institution of higher education must complete a data maturity assessment that is compliant with this section in addition to addressing all information security assessment requirements enumerated in 1 Texas Administrative Code Chapter 202.

(f) To the extent that the data maturity assessment is an element of the information security assessment required by Texas Government Code § 2054.515 and codified at 1 Texas Administrative Code Chapter 202, it is an information security standard to which a public junior college is subject pursuant to Texas Government Code § 2054.0075.

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

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §353.425, §353.427

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §353.425, concerning MCO Processing of Prior Authorization Requests Received with Incomplete or Insufficient Documentation; and §353.427, concerning Accessibility of Information Regarding Medicaid Prior Authorization Requirements in Title 1, Part 15, Chapter 353, Subchapter E, Standards for Medicaid Managed Care.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with Texas Government Code §533.00282, §533.00284, §533.002841, and §531.024163 added by Senate Bill 1207, 86th Legislature, Regular Session, 2019. These sections of the Government Code require HHSC to establish a uniform process and timeline for a prior authorization (PA) request submitted with incomplete or insufficient information or documentation and require Medicaid managed care organizations (MCOs) to improve website accessibility of information related to PA requirements.

SECTION-BY-SECTION SUMMARY

Proposed new §353.425 describes a uniform timeline and process for an MCO to use when reviewing a PA request submitted with incomplete or insufficient documentation for a member who is not hospitalized at the time of the request. The proposed rule defines "incomplete prior authorization request" and describes a standard process for MCOs to allow a provider to submit missing information and documentation necessary to establish medical necessity as listed in the PA requirements on the MCO's website. The proposed rule sets forth requirements for MCOs to communicate with providers and Medicaid members regarding incomplete or insufficient information or documentation, offers an opportunity for a peer-to-peer physician consultation, and creates a standard timeline for making a final determination on a PA request.

Proposed new §353.427 requires an MCO to maintain on its website in an easily searchable and accessible format the items listed in the proposed rule. Specifically, the items listed in the rule are applicable timelines for prior authorization requirements, an accurate and up-to-date catalogue of coverage criteria and prior authorization requirements, and the process and contact information for a provider or member to contact the MCO for the reasons described in the proposed rule. The proposed rule also defines what "accessible" means when used in the section.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will not expand, limit, or repeal an existing rule;

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

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

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the rules apply to MCOs, and there are no MCOs that are small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules and the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit will be increased transparency, appropriate utilization, and improved health care outcomes for Medicaid members by reducing unnecessary denials and delays in processing of PA requests under the Medicaid managed care program.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to MCOs that are required to comply with the proposed rules because the MCOs have incorporated the proposed process into their PA processes and have made that information easily searchable and accessible on their websites.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R083" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §32.021(a) and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. The new sections are also authorized by Texas Government Code §533.00282, §533.00284, §533.002841 and §531.024163.

The new sections affect Texas Government Code Chapters 531 and 533 and Texas Human Resources Code Chapter 32.

§353.425. MCO Processing of Prior Authorization Requests Received with Incomplete or Insufficient Documentation.

(a) The rules in this section apply when a prior authorization (PA) request is submitted with incomplete or insufficient information or documentation on behalf of a member who is not hospitalized at the time of the request.

(b) In this section, "incomplete PA request" means a request for service that is missing information or documentation necessary to establish medical necessity as listed in the PA requirements on the managed care organization's (MCO's) website.

(c) An MCO must comply with Title 42 Code of Federal Regulations §438.210, Texas Insurance Code Chapter 4201, applicable provisions of Texas Government Code Chapter 533, and the PA process and timeline requirements included in an MCO's contract with the Texas Health and Human Services Commission (HHSC).

(d) If an MCO or an entity reviewing a request on behalf of an MCO receives a PA request with incomplete or insufficient information or documentation, the MCO or reviewing entity must comply with the following HHSC requirements.

(1) An MCO reviewing the request must notify the requesting provider and the member, in writing, of the missing information no later than three business days after the MCO receives an incomplete PA request.

(2) If an MCO does not receive the information requested within three business days after the MCO notifies the requesting provider and the PA request will result in an adverse benefit determination, the MCO must refer the PA request to the MCO medical director for review.

(3) The MCO must offer to the requesting physician an opportunity for a peer-to-peer consultation with a physician no less than one business day before the MCO issues an adverse benefit determination.

(4) The MCO must make a final determination as expeditiously as the member's condition requires but no later than three days after the date the missing information is provided to an MCO.

(e) The HHSC requirements for MCO reconsideration of an incomplete PA request do not affect any related timeline for:

(1) an MCO's internal appeal process;

(2) a Medicaid state fair hearing;

(3) a review conducted by an external medical reviewer; or

(4) any rights of a member to appeal a determination on a PA request.

§353.427. Accessibility of Information Regarding Medicaid Prior Authorization Requirements.

(a) In this section, "accessible" means publicly available and capable of being found and read without impediment. Usernames and passwords cannot be required to view the information.

(b) A managed care organization (MCO) must maintain on its public-facing website the MCO's criteria and policy for prior authorizations and website links to any prior authorization request forms the provider uses.

(c) The MCO must maintain the following items on its website in an easily searchable and accessible format.

(1) Applicable timelines for prior authorization requirements, including:

(A) the timeframe in which the MCO must make a determination on a prior authorization request;

(B) a description of the notice the MCO provides to a provider or member regarding the documentation required to complete a prior authorization determination; and

(C) the deadline by which the MCO must submit the notice described in subparagraph (B) of this paragraph.

(2) An accurate and up-to-date catalogue of coverage criteria and prior authorization requirements, including:

(A) the effective date of a prior authorization requirement, if the requirement is first imposed on or after September 1, 2019;

(B) a list or description of any supporting or supplemental documentation necessary to obtain prior authorization for a specified service; and

(C) the date and results of each annual review of the MCO's prior authorization requirements as required by Texas Government Code §533.00283(a).

(3) The process and contact information for a provider or member to contact the MCO to:

(A) clarify prior authorization requirements; and

(B) obtain assistance in submitting a prior authorization request.

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 August 21, 2023.

TRD-202303081
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 438-4395

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER O. ELECTRONIC VISIT VERIFICATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §354.4001, concerning Purpose and Authority; and §354.4003, concerning Definitions; the repeal of §354.4005, concerning Applicability; §354.4007, concerning EVV System; §354.4009, concerning Requirements for Claims Submission and Approval; §354.4011, concerning Member Rights and Responsibilities; and §354.4013, concerning Additional Requirements; and new §354.4005, concerning Personal Care Services that Require the Use of EVV; §354.4006, concerning Home Health Care Services that Require the Use of EVV; §354.4007, concerning EVV System; §354.4009, concerning EVV Visit Transaction and EVV Claim; §354.4011, concerning Visit Maintenance; §354.4013, concerning HHSC and MCO Compliance Reviews and Enforcement Actions; §354.4015, concerning EVV Training Requirements; §354.4017, concerning Process to Request Approval of a Proposed EVV Proprietary System and Additional Requirements for a PSO; §354.4019, concerning Access to EVV System and EVV Documentation; §354.4021, concerning Additional Requirements; §354.4023, concerning Sanctions; and §354.4025, concerning Administrative Hearing.

BACKGROUND AND PURPOSE

In accordance with Section 1903(l) of the Social Security Act (42 U.S.C. §1396b(l)), HHSC requires that electronic visit verification (EVV) be used to document the provision of certain personal care services provided through Medicaid. One purpose of the proposed rules is to ensure that HHSC complies with the requirement in Section 1903(l) that EVV be used to document the provision of Medicaid home health care services. Although Section 1903(l) requires the use of EVV for Medicaid home health services to have begun January 1, 2023, the Centers for Medicare & Medicaid Services granted HHSC an extension allowing HHSC to implement this requirement by January 1, 2024.

Another purpose of the proposed rules is to codify in rules current policies and procedures related to EVV including training requirements, visit maintenance requirements, compliance reviews, and the process for HHSC to recognize a health care provider's proprietary EVV system as described in Texas Government Code §531.024172(g).

The proposed rules repeal several rules and replace them with new rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §354.4001, Purpose and Authority, makes minor editorial changes to terminology, deletes language for brevity and clarity, and corrects a statutory reference.

The proposed amendment to §354.4003, Definitions, reformats some of the defined terms and makes edits to some of the definitions for clarity. In addition, the proposed amendment adds definitions for the following new terms: EVV claim; EVV portal; EVV portal user; EVV system user; home health aide; ICF/IID--intermediate care facility for individuals with an intellectual disability or related conditions; IMD--institution for mental diseases; LVN--licensed vocational nurse; nursing facility; occupational therapist; PCS--personal care services; PDN--private duty nursing; physical therapist; PSO--proprietary system operator; RN--registered nurse; vendor hold; and visit maintenance.

Proposed new §354.4005, Personal Care Services that Require the Use of EVV, requires a program provider to ensure that a service provider uses EVV to document the provision of certain specified personal care services by the program provider. The new section also requires a consumer directed services (CDS) employer to ensure that a service provider uses EVV to document the provision of certain specified personal care services through the CDS option. One of the specified services in this section is in-home individualized skills and socialization, which replaces day habilitation provided in a member's residence.

The proposed repeal of §354.4005, Applicability, deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4005, Personal Care Services that Require the Use of EVV.

Proposed new §354.4006, Home Health Care Services that Require the Use of EVV, requires a program provider to ensure that a service provider uses EVV to document the provision of certain specified home health care services by the program provider on or after January 1, 2024. The new section also requires a CDS employer to ensure that a service provider uses EVV to document the provision of certain specified home health care services using the CDS option on or after January 1, 2024.

Proposed new §354.4007, EVV System, provides that a program provider or a financial management services agency (FMSA) must use either an EVV vendor system or EVV proprietary system to document the provision of a service and requires a CDS employer to use the EVV system selected by their FMSA. The proposed new rule requires that, except as provided in subsection (d), a program provider, an FMSA, and a CDS employer ensure that a service provider uses an EVV system to electronically document the provision of a service described in proposed new §354.4005 or §354.4006. The proposed new rule describes the action a program provider, FMSA or a CDS employer must take if a service provider fails to use an EVV system to document the provision of a service described in proposed new §354.4005 or §354.4006 or if a service provider cannot use an EVV system because the EVV system is unavailable. The proposed new rule provides that HHSC may take certain actions if a program provider or an FMSA does not comply with subsections (a), (c), or (d) of this section. The proposed new rule also provides that HHSC or managed care organization (MCO) may take certain actions if a CDS employer does not comply with subsections (b), (c), or (d) of this section.

The proposed repeal of §354.4007, EVV System deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4007, EVV System.

Proposed new §354.4009, EVV Visit Transaction and EVV Claim, requires a program provider and an FMSA to ensure that an EVV visit transaction contains certain specified data elements required by the EVV system and that the data elements are accurate. The proposed new rule also includes a similar requirement for a CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form. The proposed new rule requires a program provider and an FMSA to make certain assurances before submitting an EVV claim including that the EVV visit transaction is transmitted to and accepted by the EVV Portal, and to submit the EVV claim in accordance with HHSC or MCO billing requirements and the EVV Policy Handbook. Further, the proposed new rule provides that HHSC or an MCO denies an EVV claim or recoups a payment made to a program provider or an FMSA if the EVV claim does not meet requirements described in the EVV Policy Handbook.

The proposed repeal of §354.4009, Requirements for Claims Submission and Approval deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4009, EVV Visit Transaction and EVV Claim.

Proposed new §354.4011, Visit Maintenance, requires a program provider and an FMSA to complete visit maintenance in accordance with the EVV Policy Handbook. The proposed new rule also includes a similar requirement for a CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form. In addition, the proposed new rule allows the program provider, FMSA, and CDS employer to complete visit maintenance after the visit maintenance time frame has expired only if the program provider, FMSA, or CDS employer submits a Visit Maintenance Unlock Request in accordance with the EVV Policy Handbook and HHSC or an MCO approves the Visit Maintenance Unlock Request.

The proposed repeal §354.4011, Member Rights and Responsibilities deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4011, Visit Maintenance.

Proposed new §354.4013, HHSC and MCO Compliance Reviews and Enforcement Actions, describes the types of compliance reviews conducted by HHSC and an MCO of a program provider, FMSA, and CDS employer and the circumstances under which certain action may be taken based on a review, including recoupment of payment, imposition of a vendor hold, or termination of a member's participation in the CDS option.

The proposed repeal §354.4013, Additional Requirements deletes the rule because it is no longer necessary, and replaces it with proposed new §354.4013, HHSC and MCO Compliance Reviews and Enforcement Actions.

Proposed new §354.4015, EVV Training Requirements, describes the requirements for a program provider, an FMSA, and a proprietary system operator (PSO) regarding EVV System Training, EVV Policy Training, and EVV Portal Training; the requirements for a CDS employer regarding EVV System Training and EVV Policy Training; and the requirements for a program provider and CDS employer on training a service provider on the clock in and clock out portion of the EVV System Training. In addition, the proposed new rule describes the documentation requirements to demonstrate compliance with the training requirements and the actions that may be taken by HHSC, an MCO, or an FMSA if a program provider, FMSA, PSO, or CDS employer does not comply with the training requirements.

Proposed new §354.4017, Process to Request Approval of a Proposed EVV Proprietary System and Additional Requirements for a PSO, describes the process by which a program provider or FMSA seeks HHSC's approval of a proposed proprietary sys-

tem and the basis on which HHSC approves a proposed proprietary system. In addition, the proposed new rule describes the requirements of a PSO, allows HHSC to conduct an audit of a proprietary system, and describes the actions HHSC may take if a PSO is not in compliance with the requirements in the proposed rule.

Proposed new §354.4019, Access to EVV System and EVV Documentation, requires a program provider and an FMSA to allow HHSC and the MCO with which the program provider or FMSA has a contract access to the EVV system the program provider or FMSA uses and to allow HHSC and the MCO to review EVV system documentation or obtain a copy of that documentation at no charge to HHSC or the MCO.

Proposed new §354.4021, Additional Requirements, requires a program provider, FMSA, CDS employer, service provider, member, and MCO to comply with applicable state and federal laws, rules, regulations, and the EVV Policy Handbook.

Proposed new §354.4023, Sanctions, provides that HHSC or an MCO may propose to recoup funds, impose a vendor hold, or propose to terminate the contract of a program provider or FMSA as described in proposed §354.4007, §354.4009, and §354.4013.

Proposed new §354.4025, Administrative Hearing, provides that a program provider or FMSA may request an administrative hearing in accordance with 26 TAC §357.484, Request for a Hearing, to appeal a proposed contract termination or recoupment or imposition of a vendor hold by HHSC and may appeal a proposed contract termination or recoupment or imposition of a vendor hold by an MCO in accordance with the MCO's policy.

FISCAL NOTE

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

The effect on state government for each year of the first five years the proposed rule(s) are in effect is an estimated cost of $475,938 in Federal Funds (FF) ($544,438 All Funds (AF)) in fiscal year (FY) 2022, $836,286 in FF ($951,598 AF) in FY 2023, $1,136,250 in FF ($1,515,000 AF) in FY 2024, $1,136,250 in FF ($1,515,000 AF) in FY 2025, and $1,136,250 in FF ($1,515,000 AF) in FY 2026.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule(s) will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will expand and repeal existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

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

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses or micro-businesses, or rural communities.

HHSC is unable to estimate the number of small businesses and micro-businesses subject to the proposed rules; no rural communities are EVV providers. The entities subject to the proposed rules are program providers; CDS employers; FMSAs; service providers; Medicaid recipients; and MCOs. The projected economic impact for a small or micro business is the cost to comply with the proposed rules.

The proposed rules implement the requirements of federal statute and failure to comply will result in reduced federal Medicaid funding, therefore no alternative methods were considered.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Emily Zalkovsky, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public benefit is that the provision of Medicaid home health care services will be documented by EVV in compliance with Section 1903(l) of the Social Security Act. Another public benefit is the clear identification of programs and services for which the use of EVV is required.

Trey Wood has also determined that for the first five years the rules are in effect, MCOs, program providers, FMSAs, and CDS employers who are required to comply with the proposed rules may incur economic costs. However, HHSC is unable to estimate the cost for individuals required to comply with the proposed rules.

An MCO may have additional costs: to ensure new MCO program providers subject to these proposed rules are in compliance with the EVV requirements; to provide notice to new members of the requirement for the member and service provider to use EVV; and to educate any new members about EVV.

A program provider not using EVV prior to the effective date of the proposed rules may have additional costs: to implement the use of the EVV system; to purchase and manage EVV equipment such as alternative devices; to purchase mobile devices for service providers; to use the mobile application on a mobile device; to train service providers on the use of the EVV system; to monitor and verify the service provider's service delivery using EVV; and to ensure all data elements required by HHSC are uploaded or entered completely and accurately into the EVV system before billing for the delivered services.

An FMSA not using EVV prior to the effective date of the proposed rules may have additional costs: to train CDS employers on using EVV; to train the CDS employers and service providers on their responsibilities for using EVV; to assist CDS employers

with the purchase and management of EVV equipment such as alternative devices or mobile devices for service providers to use while employed; to provide on-going assistance and support to the CDS employer regarding EVV; to monitor and verify the service provider's service delivery using EVV; and to ensure all data elements required by HHSC are uploaded or entered completely and accurately into the EVV system before billing for the delivered services.

A CDS employer not using EVV prior to the effective date of the proposed rules may have additional costs: for travel costs to attend optional in-person training events; to purchase equipment to enable a service provider to clock in and out of the EVV system, such as a landline telephone or mobile device; and to purchase equipment to enable the CDS employer to access the EVV system, such as a mobile device, computer, tablet, mobile service, or internet service.

A CDS employer's costs may be reduced or offset depending on the CDS employer's individual situation. Examples include: attending online training instead of traveling to receive training; using the CDS employer's support services budget to purchase equipment, services or pay for travel costs; delegating EVV system responsibilities to the FMSA, thus minimizing the need to purchase equipment or services; and using existing or free equipment, such as the CDS employer's existing landline or mobile device, a mobile device obtained through federal assistance programs, or an alternative device provided by the EVV vendor.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Sarah Hambrick, EVV Operations Policy Specialist, P.O. Box 13247, Mail Code W-465, Austin, Texas 78711-3247, street address 701 W 51st St, Austin, Texas, 78751-2312; or e-mailed to EVV@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 21R152" in the subject line.

1 TAC §§354.4001, 354.4003, 354.4005 - 354.4007, 354.4009, 354.4011, 354.4013, 354.4015, 354.4017, 354.4019, 354.4021, 354.4023, 354.4025

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Government Code, §531.024172, which provides that the Executive Commissioner of HHSC may adopt rules to implement an electronic visit verification system to electronically verify that personal care services or other services identified by HHSC are provided to Medicaid recipients.

The amendments and new sections affect Texas Government Code, §531.0055 and §531.024172 and Human Resources Code, §32.021.

§354.4001. Purpose and Authority.

[~~(a)~~] The purpose of this subchapter is to describe [~~implement~~] requirements related to [~~for the Texas~~] electronic visit verification authorized by: [~~(EVV) system to electronically verify that services identified in this subchapter, or any other services identified by HHSC, are provided to a member in accordance with a prior authorization or plan of care as applicable to the appropriate program.~~]

(1) Title XIX, Section 1903(l) of the Social Security Act (42 U.S.C. §1396b(l));

(2) Texas Government Code §531.024172; and

(3) Texas Human Resources Code §161.086.

[~~(b) The provisions of this subchapter are issued in accordance with the following federal and state laws:~~]

[~~(1) Title XIX, Section 1903(l) of the Social Security Act (42 U.S.C. §1396b);~~]

[~~(2) Texas Government Code §531.024172; and~~]

[~~(3) Texas Human Resource Code §161.086.~~]

§354.4003. Definitions.

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

(1) CDS employer--Consumer directed services employer. A member or the member's legally authorized representative who participates in the CDS option and whose financial management services agency (FMSA) uses an electronic visit verification (EVV) vendor system or an EVV proprietary system. A CDS employer is responsible for hiring and retaining a service provider who delivers a service described in §354.4005 of this subchapter (relating to Personal Care Services that Require the Use of EVV) or §354.4006 of this subchapter (relating to Home Health Care Services that Require the Use of EVV).

(2) CDS option--Consumer directed services option. A service delivery option in which a CDS employer employs and retains a service provider and directs the delivery of a service described in §354.4005 or §354.4006 of this subchapter.

(3) CFC--Community First Choice. A Medicaid state plan option governed by Code of Federal Regulations, Title 42, Part 441, Subpart K, Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). CFC services include the following.

(A) CFC HAB--CFC habilitation. A Medicaid state plan service that provides habilitation through CFC as described in §354.1361 of this chapter (relating to Definitions).

(B) CFC PAS--CFC personal assistance services. A Medicaid state plan service that provides personal assistance services through CFC as described in §354.1361 of this chapter.

(C) CFC PAS/HAB--CFC personal assistance services/habilitation. A Medicaid state plan service provided through CFC that provides both personal assistance services and habilitation.

(4) CLASS Program--Community Living Assistance and Support Services Program. A Medicaid waiver program approved by the Centers for Medicare & Medicaid Services under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 259 (relating to Community Living Assistance and Support Services (CLASS) Program and Community First Choice (CFC) Services).

(5) [~~(1)~~] CMS--Centers for Medicare & Medicaid Services. [~~(CMS)--~~] The federal agency within the United States Department of Health and Human Services that administers the Medicare and Medicaid programs.

[~~(2) Claims administrator--The entity HHSC has designated to perform functions such as processing certain Medicaid program provider claims, managing the EVV aggregator, and performing EVV vendor management functions.~~]

(6) [~~(3)~~] Community Attendant Services Program--A Medicaid state plan program operating under Title XIX of the Social Security Act, as described in 40 TAC Chapter 47 (relating to Primary Home Care, Community Attendant Services, and Family Care Programs).

[~~(4) Community First Choice (CFC)--A Medicaid state plan option governed by Code of Federal Regulations, Title 42, Part 441, Subpart K, Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice). This includes STAR members who receive these services through the traditional Medicaid service model also referred to as fee-for-service. CFC services include:~~]

[~~(A) Community First Choice Habilitation (CFC HAB), a Medicaid state plan service that provides habilitation through CFC;~~]

[~~(B) Community First Choice Personal Assistance Services (CFC PAS), a Medicaid state plan service that provides personal assistance services through CFC; and~~]

[~~(C) Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB), a Medicaid state plan service provided through CFC that provides both personal assistance services and habilitation combined into one service.~~]

[~~(5) Community Living Assistance and Support Services (CLASS) Program--The Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 40 TAC Chapter 45 (relating to Community Living Assistance and Support Services and Community First Choice (CFC) Services).~~]

[~~(6) Consumer Directed Services (CDS) employer--A member or legally authorized representative (LAR) who chooses to participate in the CDS option. A CDS employer, the member or LAR, is responsible for hiring and retaining a service provider who delivers a service described in §354.4005 of this subchapter (relating to Applicability).~~]

[~~(7) Consumer Directed Services option (CDS option)--A service delivery option in which a member or LAR employs and retains a service provider and directs the delivery of a service described in §354.4005 of this subchapter.~~]

(7) [~~(8)~~] DBMD Program--Deaf Blind with Multiple Disabilities. [~~(DBMD) Program--~~] The Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 260 [~~40 TAC Chapter 42~~] (relating to Deaf Blind with Multiple Disabilities (DBMD) Program and Community First Choice (CFC) Services).

(8) [~~(9)~~] EVV--Electronic visit verification. [~~(EVV)--~~]The documentation and verification of service delivery through an EVV system.

(9) [~~(10)~~] EVV aggregator--A centralized database that collects, validates, and stores statewide EVV visit data transmitted by an EVV system.

(10) EVV claim--A request for payment of a service described in §354.4005 or §354.4006 of this subchapter submitted to HHSC, HHSC's designated contractor, or a managed care organization (MCO) in accordance with the EVV Policy Handbook.

(11) EVV Policy Handbook--A handbook promulgated by HHSC that contains policies and requirements related to EVV [~~The HHSC handbook that provides EVV standards and policy requirements~~].

(12) EVV portal--An online system established by HHSC that allows users to perform searches, view reports and view EVV claim match results associated with data in the EVV aggregator.

(13) EVV portal user--A person who is employed by or contracts with a program provider or FMSA and has access to the EVV portal.

(14) [~~(12)~~] EVV proprietary system--An HHSC EVV system purchased or developed by a program provider or FMSA approved by HHSC in accordance with §354.4013 of this subchapter (relating to HHSC and MCO Compliance Reviews and Enforcement Actions) [~~HHSC-approved EVV system~~] that a program provider or FMSA uses [~~financial management services agency (FMSA) may opt to use~~] instead of an EVV vendor system. [~~that:~~]

[~~(A) is purchased or developed by a program provider or an FMSA;~~]

[~~(B) is used to exchange EVV information with HHSC or a managed care organization (MCO); and~~]

[~~(C) complies with the requirements of Texas Government Code §531.024172 or its successors.~~]

(15) [~~(13)~~] EVV system--An EVV vendor system or an EVV proprietary system used to electronically document and verify the data elements described in §354.4009(a) of this subchapter (relating to EVV Visit Transaction and EVV Claim) [~~§354.4007 of this subchapter (relating to EVV System)~~] for a visit conducted to provide a service described in §354.4005 or §354.4006 of this subchapter.

(16) EVV system user--A person who has access to the EVV system, including a person employed by or contracting with a program provider, FMSA, or CDS employer.

(17) [~~(14)~~] EVV vendor system--An EVV system developed and operated by a vendor that contracts with HHSC or HHSC's designated contractor [~~provided by an EVV vendor selected by the claims administrator, on behalf of HHSC~~] that a program provider or FMSA uses [~~may opt to use~~] instead of an EVV proprietary system.

(18) [~~(15)~~] EVV visit transaction--A [~~data~~] record generated by an EVV system that contains the data elements described in §354.4009(a) [~~§354.4007~~] of this subchapter for a visit conducted to provide a service described in §354.4005 or §354.4006 of this subchapter.

(19) [~~(16)~~] FC Program--Family Care [~~(FC)~~] Program. [--]A program funded under Title XX, Subtitle A of the Social Security Act, as described in 40 TAC Chapter 47.

(20) [~~(17)~~] FMSA--Financial management services agency. [~~(FMSA)--~~]A program provider [~~An entity~~] that contracts with HHSC or an MCO to provide financial management services to a CDS employer as described in 40[~~,~~] TAC Chapter 41 (relating to Consumer Directed Services Option).

(21) HCBS-AMH Program--Home and Community-Based Services Adult Mental Health Program. A Medicaid state plan option approved by CMS under Title XIX, Section 1915(i) of the Social Security Act, as described in 26 TAC Chapter 307, Subchapter B (relating to Home and Community-Based Services--Adult Mental Health Program).

(22) HCS Program--Home and Community-based Services Program. A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 263 (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)).

(23) [~~(18)~~] HHSC--Texas Health and Human Services Commission.

[~~(19) Home and Community-Based Services (HCBS) Adult Mental Health Program--A Medicaid state plan option approved by CMS under Title XIX, Section 1915(i) of the Social Security Act, as described in 26 TAC Chapter 307, Subchapter B (relating to Home and Community-Based Services--Adult Mental Health Program).~~]

[~~(20) Home and Community-based Services (HCS) Program--A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 40 TAC Chapter 9, Subchapter D (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)).~~]

(24) Home health aide--Has the meaning set forth in 26 TAC §558.2 (relating to Definitions).

(25) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility that is licensed in accordance with THSC Chapter 252 or certified by HHSC.

(26) IMD--Institution for mental diseases. Has the meaning set forth in 25 TAC §419.373 (relating to Definitions).

(27) LVN--Licensed vocational nurse. A person licensed to practice as a vocational nurse as described in Texas Occupations Code Chapter 301.

(28) [~~(21)~~] MCO--Managed care organization. [~~(MCO)--~~] Has the meaning set forth in Texas Government Code §536.001.

(29) [~~(22)~~] MDCP--Medically Dependent Children Program. [~~(MDCP)--~~] A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in Chapter 353, Subchapter M of this title (relating to Home and Community Based Services in Managed Care).

(30) [~~(23)~~] MDCP STAR Health covered service--Medically Dependent Children Program STAR Health [~~(MDCP STAR Health)~~] covered service. [~~--~~]A service provided to a member eligible to receive MDCP benefits under the STAR Health Program.

(31) [~~(24)~~] MDCP STAR Kids covered service--Medically Dependent Children Program STAR Kids [~~(MDCP STAR Kids)~~] covered service. [~~--~~]A service provided to a member eligible to receive MDCP benefits under the STAR Kids Program.

(32) [~~(25)~~] Member--A person enrolled in one of the following: [~~eligible to receive a service described in §354.4005 of this subchapter.~~]

(A) traditional Medicaid service delivery model also referred to as fee-for-service;

(B) the CLASS Program;

(C) the Community Attendant Services Program;

(D) the DBMD Program;

(E) the FC Program;

(F) the HCBS-AMH Program;

(G) the HCS Program;

(H) the Primary Home Care Program;

(I) the STAR Program;

(J) the STAR Health Program;

(K) the STAR Kids Program;

(L) the STAR+PLUS Program;

(M) the STAR+PLUS Home and Community-Based Services Program;

(N) the STAR+PLUS Medicare-Medicaid Program;

(O) the Texas Home Living Program;

(P) Texas Health Steps Comprehensive Care Program (CCP); or

(Q) the Youth Empowerment Services Program.

(33) Nursing facility--A facility licensed in accordance with Texas Health and Safety Code Chapter 242.

(34) Occupational therapist--A person licensed as an occupational therapist in accordance with Texas Occupations Code Chapter 454.

(35) PCS--Personal Care Services. Support services provided to a member enrolled in Texas Health Steps CCP who requires assistance with activities of daily living or instrumental activities of daily living as described in §363.602 of this title (relating to Definitions).

(36) PDN--Private duty nursing. Has the same meaning as the term "Private duty nursing (PDN) Services" in 1 TAC Chapter 363, Subchapter C, §363.303 (relating to Definitions).

(37) [~~(26)~~] Primary Home Care Program--A Medicaid state plan program operating under Title XIX of the Social Security Act, as described in 40 TAC Chapter 47.

(38) Physical therapist--A person licensed as a physical therapist in accordance with Texas Occupations Code Chapter 453.

(39) [~~(27)~~] Program provider--An entity that contracts with HHSC or an MCO to provide a service described in §354.4005 or §354.4006 of this subchapter and that uses an EVV vendor system or an EVV proprietary system. A service provider described in paragraph (43)(B) of this section is both a program provider and a service provider.

(40) PSO--Proprietary system operator. A program provider or FMSA that uses an EVV proprietary system.

(41) [~~(28)~~] Reason code--A standardized HHSC-approved code entered in [~~into~~] an EVV system to explain the [~~specific~~] reason for completing visit maintenance [~~a change was made to an EVV visit transaction~~].

(42) RN--Registered nurse. A person licensed to practice as a registered nurse as described in Texas Occupations Code Chapter 301.

(43) [~~(29)~~] Service provider--A person who provides a service described in §354.4005 or §354.4006 of this subchapter and who [~~is employed or contracted by~~]:

(A) is employed by or contracting with:

(i) a program provider; or

(ii) a CDS employer; or

(B) who is contracting with:

(i) an MCO; or

(ii) HHSC.

[~~(A) a program provider;~~]

[~~(B) a CDS employer; or~~]

[~~(C) a member who has selected the service responsibility option (SRO).~~]

(44) [~~(30)~~] SRO--Service responsibility option. [~~(SRO)--~~] A service delivery option described in 40 TAC Chapter 43 (relating to Service Responsibility Option) in which a member or legally authorized representative [~~LAR~~] selects, trains, and provides daily management of a service provider, while the fiscal, personnel, and service back-up plan responsibilities remain with the program provider.

(45) [~~(31)~~] STAR--State of Texas Access Reform.

[~~(32) STAR Program--A Medicaid program operating under Title XIX, Section 1115 of the Social Security Act. The program provides services through a managed care delivery model to a member enrolled in STAR as described in Chapter 353, Subchapter I of this title (relating to STAR).~~]

(46) [~~(33)~~] STAR Health Program--A [~~The~~] Medicaid program operating under Title XIX, Section 1915(a) of the Social Security Act and Texas Family Code, Chapter 266. The program provides services through a managed care delivery model to a member enrolled in STAR Health as described in Chapter 353, Subchapter H of this title (relating to STAR Health).

(47) [~~(34)~~] STAR Kids Program--A [~~The~~] Medicaid program operating under Title XIX, Section 1115 of the Social Security Act and Texas Government Code Chapter 533. The program provides services through a managed care delivery model to a member enrolled in STAR Kids as described in Chapter 353, Subchapter N of this title (relating to STAR Kids).

(48) STAR Program--A Medicaid program operating under Title XIX, Section 1115 of the Social Security Act. The program provides services through a managed care delivery model to a member enrolled in STAR as described in Chapter 353, Subchapter I of this title (relating to STAR).

(49) [~~(35)~~] STAR+PLUS HCBS Program--STAR+PLUS Home and Community-Based Services Program. [~~(STAR+PLUS HCBS Program)--~~] A Medicaid program operating through a federal waiver under Title XIX, Section 1115 of the Social Security Act. The program provides services to a member eligible to receive HCBS benefits under the STAR+PLUS Program, as described in Chapter 353, Subchapter M of this title (relating to Home and Community Based Services in Managed Care).

(50) [~~(36)~~] STAR+PLUS MMP--STAR+PLUS Medicare-Medicaid Plan. [~~(STAR+PLUS MMP)--~~] A managed care program operating under Title XIX, Section 1115A of the Social Security Act that provides the authority to test and evaluate a fully integrated care model for clients who are dual eligible. The STAR+PLUS MMPs contract [~~are contracted~~] with CMS and HHSC to participate in the Dual Demonstration Program described in Chapter 353, Subchapter L of this title (relating to Texas Dual Eligibles Integrated Care Demonstration Project).

(51) [~~(37)~~] STAR+PLUS Program--A Medicaid program operating under Title XIX, Section 1115 of the Social Security Act, and Texas Government Code Chapter 533. The program provides services through a managed care delivery model to a member enrolled in STAR+PLUS as described in Chapter 353, Subchapter G of this title (relating to STAR+PLUS).

(52) [~~(38)~~] TAC--Texas Administrative Code.

(53) [~~(39)~~] Texas Health Steps CCP--Texas Health Steps Comprehensive Care Program. [~~--~~] A Medicaid comprehensive program approved by CMS under Title XIX, Section 1905 of the Social Security Act, as described in Chapter 363 [~~, Subchapter F~~] of this title (relating to Texas Health Steps Comprehensive Care Program [~~Personal Care Services~~]). [~~This includes STAR members who receive these services through the traditional Medicaid service model also referred to as fee-for-service.~~]

(54) [~~(40)~~] TxHmL--Texas Home Living [~~(TxHmL)~~] Program. [~~--~~]A Medicaid waiver program approved by CMS under Title XIX, Section 1915(c) of the Social Security Act, as described in 26 TAC Chapter 262 [~~40 TAC Chapter 9, Subchapter N~~] (relating to Texas Home Living (TxHmL) Program and Community First Choice (CFC)).

(55) Vendor hold--A temporary suspension of payments for claims that are due to a program provider or FMSA.

(56) Visit maintenance--As described in the EVV Policy Handbook, a process to:

(A) manually enter data elements described in §354.4009(a) of this subchapter in an EVV system;

(B) correct the data elements described in §354.4009(a) of this subchapter that are inaccurate in an EVV visit transaction; or

(C) include the data elements described in §354.4009(a) of this subchapter that are missing in an EVV visit transaction.

(57) [~~(41)~~] YES Program--Youth Empowerment Services Program. [~~--~~]A Medicaid waiver approved by CMS under Title XIX, Section 1915(c) of the Social Security Act as described in 26 TAC Chapter 307, Subchapter A (relating to Youth Empowerment Services (YES)).

§354.4005. Personal Care Services that Require the Use of EVV.

(a) A program provider must ensure a service provider uses EVV to document the provision of the following personal care services by the program provider:

(1) in the traditional Medicaid service model also referred to as fee-for-service, including for members enrolled in STAR who receive PCS through fee-for-service:

(A) CFC PAS;

(B) CFC HAB;

(C) PCS provided under Texas Health Steps CCP, including SRO; and

(D) PCS-Behavioral Health provided under Texas Health Steps CCP, including SRO;

(2) in the CLASS Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(3) personal attendant services provided through the Community Attendant Services Program, including SRO;

(4) in the DBMD Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(5) personal attendant services provided through the FC Program, including SRO;

(6) in the HCBS-AMH Program:

(A) supported home living; and

(B) in-home respite;

(7) in the HCS Program:

(A) CFC PAS/HAB;

(B) in-home respite; and

(C) in-home individualized skills and socialization provided to members with the residential type of "own/family home";

(8) personal attendant services provided through the Primary Home Care Program, including SRO;

(9) in the STAR Health Program:

(A) CFC PAS, including SRO;

(B) CFC HAB, including SRO; and

(C) for a member in STAR Health MDCP:

(i) in-home respite, with and without RN delegation, including SRO; and

(ii) flexible family support, with and without RN delegation, including SRO;

(10) in the STAR Kids Program:

(A) CFC PAS, including SRO;

(B) CFC HAB, including SRO; and

(C) for a member in STAR Kids MDCP:

(i) in-home respite, with and without RN delegation, including SRO; and

(ii) flexible family support, with and without RN delegation, including SRO;

(11) in the STAR+PLUS Program:

(A) personal assistance services, including SRO;

(B) CFC PAS, including SRO; and

(C) CFC HAB, including SRO;

(12) in the STAR+PLUS HCBS Program:

(A) in-home respite care, including SRO;

(B) protective supervision, including SRO;

(C) personal assistance services, including SRO;

(D) CFC PAS, including SRO; and

(E) CFC HAB, including SRO;

(13) in the STAR+PLUS MMP:

(A) in-home respite care, including SRO;

(B) protective supervision, including SRO;

(C) personal assistance services, including SRO;

(D) CFC PAS, including SRO; and

(E) CFC HAB, including SRO;

(14) in the TxHmL Program:

(A) CFC PAS/HAB;

(B) in-home respite; and

(C) in-home individualized skills and socialization;

(15) in-home respite provided in the YES Program; and

(16) any other service required by federal or state mandates.

(b) A CDS employer must ensure a service provider uses EVV to document the provision of the following personal care services through the CDS option:

(1) in the traditional Medicaid service model also referred to as fee-for-service:

(A) CFC PAS;

(B) CFC HAB;

(C) PCS provided under Texas Health Steps CCP; and

(D) PCS-Behavioral Health provided under Texas Health Steps CCP;

(2) in the CLASS Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(3) personal attendant services provided through the Community Attendant Services Program;

(4) in the DBMD Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(5) personal attendant services provided through the FC Program;

(6) in the HCS Program:

(A) CFC PAS/HAB; and

(B) in-home respite;

(7) personal attendant services provided through the Primary Home Care Program;

(8) in the STAR Health Program:

(A) CFC PAS;

(B) CFC HAB; and

(C) for a member in STAR Health MDCP:

(i) in-home respite, with and without RN delegation; and

(ii) flexible family support, with and without RN delegation;

(9) in the STAR Kids Program:

(A) CFC PAS;

(B) CFC HAB; and

(C) for a member in STAR Kids MDCP:

(i) in-home respite, with and without RN delegation; and

(ii) flexible family support, with and without RN delegation;

(10) in the STAR+PLUS Program:

(A) personal assistance services;

(B) CFC PAS; and

(C) CFC HAB;

(11) in the STAR+PLUS HCBS Program:

(A) in-home respite care;

(B) protective supervision;

(C) personal assistance services;

(D) CFC PAS; and

(E) CFC HAB;

(12) in the STAR+PLUS MMP:

(A) in-home respite care;

(B) protective supervision;

(C) personal assistance services;

(D) CFC PAS; and

(E) CFC HAB; and

(13) in the TxHmL Program:

(A) CFC PAS/HAB;

(B) in-home respite; and

(C) in-home individualized skills and socialization.

§354.4006. Home Health Care Services that Require the Use of EVV.

(a) A program provider must ensure a service provider uses EVV to document the provision of the following home health care services by the program provider on or after January 1, 2024:

(1) in the traditional Medicaid service model also referred to as fee-for-service, for a member who does not reside in a nursing facility, an ICF/IID, or an IMD, the following services when provided in the residence of the member:

(A) any nursing service, other than PDN;

(B) occupational therapy; and

(C) physical therapy;

(2) in the CLASS Program, for a member who does not receive support family services or continued family services, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(3) in the DBMD Program, for a member who does not receive licensed assisted living or licensed home health assisted living, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(4) in the HCS Program, for a member whose residential type is "own/family home," the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(5) in the HCBS-AMH Program, for a member who does not receive host home/companion care, supervised living services, or assisted living services, the following services when provided in the residence of the member:

(A) nursing - RN; and

(B) nursing - LVN;

(6) in the STAR Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(7) in the STAR Health Program, the following services when provided in the residence of the member:

(A) home health nursing, other than PDN;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(E) nursing delegation and supervision of PCS and CFC tasks; and

(F) for a member in STAR Health MDCP, the following services when provided in the residence of the member:

(i) RN delegation and supervision of personal care services and CFC tasks, other than PDN;

(ii) flexible family supports services performed by RN or an LVN; and

(iii) in-home respite performed by RN or an LVN;

(8) in the STAR Kids Program, the following services when provided in the residence of the member:

(A) home health nursing, other than PDN;

(B) occupational therapy;

(C) physical therapy;

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(E) nursing delegation and supervision of PCS and CFC tasks; and

(F) for a member in STAR Kids MDCP, the following services when provided in the residence of the member:

(i) RN delegation and supervision of personal care services and CFC tasks, other than PDN;

(ii) flexible family supports services performed by an RN or LVN; and

(iii) in-home respite performed by an RN or LVN;

(9) in the STAR+PLUS Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(10) in the STAR+PLUS HCBS Program, for members not receiving adult foster care, assisted living services - single occupancy, assisted living services - double occupancy, or assisted living services - non-apartment, the following services when provided in the residence of the member:

(A) home health nursing, including SRO;

(B) occupational therapy, including SRO;

(C) physical therapy, including SRO; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist, including SRO;

(11) in the STAR+PLUS MMP, for members not receiving adult foster care, assisted living services - single occupancy, assisted living services - double occupancy, or assisted living services - non-apartment, the following services when provided in the residence of the member:

(A) home health nursing, including SRO;

(B) occupational therapy, including SRO;

(C) physical therapy, including SRO; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist, including SRO;

(12) in the TxHmL Program, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy; and

(13) any other service required by federal or state mandates.

(b) A CDS employer must ensure a service provider uses EVV to document the provision of the following home health care services using the CDS option on or after January 1, 2024:

(1) in the CLASS Program, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(2) in the HCS Program, for a member whose residential type is "own/family home," the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy;

(3) in the STAR Health Program for a member in STAR Health MDCP, the following services when provided in the residence of the member:

(A) flexible family supports services performed by any RN or any LVN; and

(B) in-home respite performed by any RN or any LVN;

(4) in the STAR Kids Program for a member in STAR Kids MDCP, the following services when provided in the residence of the member:

(A) flexible family supports services performed by any RN or any LVN; and

(B) in-home respite performed by any RN or any LVN;

(5) in the STAR+PLUS Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) personal care services provided by a home health aide under the supervision of an RN, occupational therapist, or physical therapist;

(6) in the STAR+PLUS HCBS Program, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) home health aide services as an extension of physical therapy, occupational therapy, or nursing services;

(7) in the STAR+PLUS MMP, the following services when provided in the residence of the member:

(A) home health nursing;

(B) occupational therapy;

(C) physical therapy; and

(D) home health aide services as an extension of physical therapy, occupational therapy, or nursing services; and

(8) in the TxHmL Program, the following services when provided in the residence of the member:

(A) any nursing service;

(B) occupational therapy; and

(C) physical therapy.

§354.4007. EVV System.

(a) A program provider or FMSA must use one of the following EVV systems to electronically document the provision of a service described in §354.4005 or §354.4006 of this subchapter (relating to Personal Care Services that Require the Use of EVV and Home Health Care Services that Require the use of EVV):

(1) an EVV vendor system; or

(2) an EVV proprietary system.

(b) A CDS employer must use the EVV system selected by their FMSA.

(c) Except as provided in subsection (d) of this section, a program provider, an FMSA, and a CDS employer must ensure that a service provider uses an EVV system to electronically document the provision of a service described in §354.4005 or §354.4006 of this subchapter as described in the EVV Policy Handbook.

(d) If a service provider fails to use an EVV system to document the provision of a service described in §354.4005 or §354.4006 of this subchapter or if a service provider cannot use an EVV system because the EVV system is unavailable, a program provider, FMSA or a CDS employer must:

(1) ensure the data elements required by §354.4009(a)(1) of this subchapter (relating to EVV Visit Transaction and EVV Claim) are accurate; and

(2) complete visit maintenance.

(e) If a program provider or an FMSA does not comply with subsections (a), (c), or (d) of this section, HHSC or an MCO may do one or more of the following:

(1) deny payment for a service;

(2) take enforcement action including:

(A) requiring a program provider or FMSA to complete a corrective action plan; or

(B) propose to terminate the contract of the program provider or FMSA.

(f) If a CDS employer does not comply with subsections (b), (c), or (d) of this section, HHSC or an MCO may:

(1) require the CDS employer to complete a corrective action plan; or

(2) propose to terminate the member's participation in the CDS option.

§354.4009. EVV Visit Transaction and EVV Claim.

(a) A program provider and an FMSA must:

(1) ensure that an EVV visit transaction contains the data elements required by the EVV system, including:

(A) the first and last name of the member who received the service;

(B) the type of service provided;

(C) the date the service was provided;

(D) the time the service began and the time the service ended;

(E) the first and last name of the service provider who provided the service;

(F) the location, including the address or geolocation, where the service was provided; and

(G) other information HHSC determines necessary to ensure the accurate payment of a claim for services, as described in the EVV Policy Handbook; and

(2) ensure the data elements required by paragraph (1) of this subsection are accurate.

(b) A CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form must:

(1) ensure that an EVV visit transaction contains the data elements required by the EVV system, including those listed in subsection (a)(1) of this section; and

(2) ensure the data elements required by paragraph (1) of this subsection are accurate.

(c) A program provider and an FMSA must:

(1) before submitting an EVV claim:

(A) ensure that the EVV visit transaction is transmitted to and accepted by the EVV Portal; and

(B) ensure that the data elements on the EVV claim match the data elements in the accepted EVV visit transaction; and

(2) submit the EVV claim in accordance with HHSC or MCO billing requirements and the EVV Policy Handbook.

(d) HHSC or an MCO denies an EVV claim or recoups a payment made to a program provider or an FMSA if the EVV claim does not meet requirements described in the EVV Policy Handbook, including if:

(1) the EVV claim does not match the accepted EVV visit transaction; or

(2) there is no accepted EVV visit transaction that supports the EVV claim.

§354.4011. Visit Maintenance.

(a) A program provider and an FMSA must complete visit maintenance, including the visit maintenance described in §354.4007(d) of this subchapter (relating to EVV System):

(1) in accordance with the EVV Policy Handbook; and

(2) within the visit maintenance time frame after the date a service was provided as described in the EVV Policy Handbook.

(b) If a CDS employer elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form, the CDS employer must complete visit maintenance in accordance with subsection (a)(1) and (2) of this section.

(c) After the visit maintenance time frame has expired, the program provider, FMSA, and CDS employer may complete visit maintenance only if:

(1) the program provider, FMSA, or CDS employer submits a Visit Maintenance Unlock Request in accordance with the EVV Policy Handbook; and

(2) HHSC or an MCO approves the Visit Maintenance Unlock Request.

§354.4013. HHSC and MCO Compliance Reviews and Enforcement Actions.

(a) HHSC and an MCO conduct the following compliance reviews in accordance with the EVV Policy Handbook:

(1) an EVV Usage Review;

(2) an EVV Landline Phone Verification Review; and

(3) an EVV Required Free Text Review.

(b) If HHSC or an MCO determines from an EVV Usage Review that a program provider's or FMSA's EVV Usage score is less than 80% and such score is:

(1) the first occurrence within a 24-month period, HHSC or an MCO may require the program provider or FMSA to complete EVV policy, system, and portal trainings within a specific time frame;

(2) the second occurrence within a 24-month period, HHSC or an MCO may require the program provider or FMSA to complete a corrective action plan within 10 business days after the date the program provider or FMSA is notified that the EVV Usage score is less than 80%; or

(3) the third occurrence within a 24-month period, HHSC or an MCO may propose to terminate the contract of the program provider or FMSA.

(c) If HHSC or an MCO determines from an EVV Usage Review that a CDS Employer's EVV Usage score is less than 80% and such score is:

(1) the first occurrence within a 24-month period, HHSC or an MCO may require the CDS employer to complete EVV policy and system trainings within a specific time frame;

(2) the second occurrence within a 24-month period, HHSC or an MCO may require the CDS employer to complete a corrective action plan within 10 business days after the date the CDS employer is notified that the EVV Usage score is less than 80%; or

(3) the third occurrence within a 24-month period, HHSC or an MCO may propose to terminate the member's participation in the CDS option.

(d) If a program provider or FMSA does not complete EVV trainings or a corrective action plan as required by subsection (b)(1) and (2) of this section, HHSC or the MCO may impose a vendor hold on the program provider or FMSA until the EVV trainings or a corrective action plan is completed.

(e) If a CDS employer does not complete EVV trainings required by subsection (c)(1) of this section, HHSC or the MCO may require the CDS employer to complete a corrective action plan within 10 business days after the date the CDS employer is notified that EVV trainings were not completed.

(f) If a CDS employer does not complete a corrective action plan as required by subsections (c)(2) or (e) of this section, HHSC or the MCO may propose to terminate the member's participation in the CDS option.

(g) If HHSC or an MCO determines from an EVV Landline Phone Verification Review that a service provider has used an unallowable phone type as described in the EVV Policy Handbook to clock in and clock out of the EVV system:

(1) HHSC or an MCO provides written notification of such determination to the program provider or FMSA;

(2) within 20 business days after receipt of the written notification, the program provider or FMSA must provide the documentation described in the written notification to HHSC or the MCO; and

(3) if the program provider or FMSA does not provide the documentation described in the written notification to HHSC or the MCO, HHSC or the MCO may impose a vendor hold on the program provider or FMSA until the program provider or FMSA provides the documentation.

(h) If HHSC or an MCO determines from an EVV Required Free Text Review that a program provider, an FMSA, or a CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form did not enter free text in the EVV system on an EVV visit transaction when using a reason code as required by the EVV Policy Handbook, HHSC or the MCO may recoup payment made to the program provider or the FMSA for the EVV claim associated with the EVV visit transaction.

§354.4015. EVV Training Requirements.

(a) A program provider that uses an EVV vendor system, an FMSA that uses a vendor system, and a CDS employer whose FMSA uses an EVV vendor system must ensure that an EVV system user completes EVV System Training described in the EVV Policy Handbook and provided by the EVV vendor:

(1) before the EVV system user begins using the EVV system; and

(2) yearly thereafter.

(b) A PSO or a CDS employer whose FMSA is a PSO must ensure that an EVV system user completes EVV System Training described in the EVV Policy Handbook and provided by the PSO or an entity on behalf of the PSO:

(1) before the EVV system user begins using the EVV system; and

(2) yearly thereafter.

(c) A program provider, an FMSA, and a CDS employer must ensure that an EVV system user completes EVV Policy Training described in the EVV Policy Handbook and provided by HHSC or the MCO with which the program provider or FMSA contracts:

(1) before the EVV system user begins using the EVV system; and

(2) yearly thereafter.

(d) A program provider and FMSA must ensure that an EVV portal user:

(1) completes EVV Portal Training described in the EVV Policy Handbook and provided by HHSC or its designated contractor:

(A) before the EVV portal user begins using the EVV portal; and

(B) yearly thereafter; and

(2) completes EVV Policy Training described in the EVV Policy Handbook provided by HHSC or the MCO with which the program provider or FMSA contracts:

(A) before the EVV portal user begins using the EVV portal; and

(B) yearly thereafter.

(e) A program provider and a CDS employer must train a service provider on the clock in and clock out portion of the EVV System Training described in subsections (a) and (b) of this section:

(1) before the service provider begins using the EVV system; and

(2) yearly thereafter.

(f) A program provider that is not an FMSA and uses an EVV vendor system must document the following to demonstrate compliance with subsections (a) and (c) - (e) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(g) A PSO that is not an FMSA must document the following to demonstrate compliance with subsections (b) - (e) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(h) An FMSA that is not a PSO must document the following to demonstrate compliance with subsections (a), (c) and (d) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(i) An FMSA that is a PSO must document the following to demonstrate compliance with subsections (b) - (d) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(j) A CDS employer whose FMSA is not a PSO must document the following to demonstrate compliance with subsections (a), (c) and (e) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(k) A CDS employer whose FMSA is a PSO must document the following to demonstrate compliance with subsections (b), (c) and (e) of this section:

(1) the name of the training;

(2) the name of the person who completed the training; and

(3) the date of the training.

(l) If a program provider or an FMSA does not comply with subsections (a), (c), or (d) of this section, HHSC or an MCO may require the program provider or FMSA to complete a corrective action plan.

(m) If a PSO does not comply with subsection (b) of this section, HHSC or an MCO may require the PSO to complete a corrective action plan.

(n) If a program provider that is not an FMSA does not comply with subsection (e) of this section, HHSC or an MCO may require the program provider to complete a corrective action plan.

(o) If a CDS employer whose FMSA is not a PSO does not comply with subsections (a), (c), and (e), an FMSA may require the CDS employer to complete a corrective action plan.

(p) If a CDS employer whose FMSA is a PSO does not comply with subsections (b), (c) and (e), an FMSA may require the CDS employer to complete a corrective action plan.

§354.4017. Process to Request Approval of a Proposed EVV Proprietary System and Additional Requirements for a PSO.

(a) This section applies to a program provider or FMSA seeking HHSC's approval of a proposed EVV proprietary system. To request HHSC's approval of a proposed EVV proprietary system, a program provider or FMSA must comply with the onboarding process described in the EVV Policy Handbook, which includes:

(1) completing and submitting the EVV Proprietary System Request Form; and

(2) participating in an operational readiness review session.

(b) HHSC approves a proposed EVV proprietary system if a program provider or FMSA:

(1) demonstrates that the proposed EVV proprietary system complies with:

(A) the EVV Policy Handbook

(B) the EVV Business Rules for Proprietary Systems; and

(C) state and federal laws governing EVV; and

(2) successfully completes the operational readiness review by receiving a score of 100% in the following methods, as described in the EVV Policy Handbook:

(A) certification;

(B) documentation;

(C) demonstration; and

(D) trading partner testing.

(c) A PSO must:

(1) ensure the EVV proprietary system complies with the HHSC EVV Policy Handbook, the EVV Business Rules for Proprietary Systems, and state and federal laws governing EVV;

(2) assume responsibility for the design, development, operation, and performance of the EVV proprietary system;

(3) cover all costs to develop, implement, operate, and maintain the EVV proprietary system;

(4) ensure the accuracy of EVV data collected, stored, and reported by the EVV proprietary system;

(5) assume all liability and risk for the use of the EVV proprietary system;

(6) maintain all data generated by the EVV proprietary system to demonstrate compliance with this subchapter and for general business purposes;

(7) develop training materials on the proprietary system and train HHSC staff and MCO staff;

(8) provide access to all HHSC-approved clock in and clock out methods offered by the PSO to a service provider at no cost to a member, HHSC, an MCO, or HHSC's designated contractor;

(9) ensure the functionality and accuracy of all clock in and clock out methods provided to a service provider;

(10) comply with the process in the HHSC EVV Policy Handbook if transferring EVV proprietary systems; and

(11) notify HHSC, in writing, if:

(A) the EVV proprietary system is not in compliance with the HHSC EVV Policy Handbook, the EVV Business Rules for Proprietary Systems, and state and federal laws governing EVV; or

(B) if the PSO plans to make significant changes to the EVV system.

(d) HHSC may, at its discretion, audit an EVV proprietary system. Such audit may be conducted by a contractor of HHSC.

(e) If HHSC determines that a PSO is not in compliance with subsection (c) of this section, HHSC may, in accordance with the HHSC EVV Policy Handbook:

(1) require the PSO to correct the non-compliance within a time frame specified by HHSC;

(2) reject EVV visit transactions from the proprietary system until HHSC determines the non-compliance is corrected;

(3) cancel the use of the EVV proprietary system if:

(A) the PSO fails to correct the non-compliance within the time frame specified by HHSC; or

(B) the PSO does not respond to a written communication from HHSC about the non-compliance within the time frame specified by HHSC; and

(4) cancel the use of an EVV proprietary system without giving the PSO the opportunity to correct the non-compliance:

(A) if the non-compliance is egregious, as determined by HHSC; or

(B) because of a substantiated allegation of fraud, waste, or abuse by the Office of Inspector General.

§354.4019. Access to EVV System and EVV Documentation.

A program provider and an FMSA must:

(1) allow HHSC and the MCO with which the program provider or FMSA has a contract immediate, direct, and on-site access to the EVV system the program provider or FMSA uses;

(2) at HHSC's request, allow HHSC to review EVV system documentation or obtain a copy of that documentation at no charge to HHSC; and

(3) at the request of an MCO with which an EVV claim is filed, allow the MCO to review EVV system documentation related to the EVV claim or obtain a copy of that documentation at no charge to the MCO.

§354.4021. Additional Requirements.

A program provider, an FMSA, a CDS employer, a service provider, a member, and an MCO must comply with:

(1) applicable state and federal laws, rules, regulations, including the Health Insurance Portability Accountability Act of 1966 at 42 U.S.C. §1320d, et. seq., and regulations adopted under that act at 45 CFR Parts 160 and 164; and

(2) the EVV Policy Handbook.

§354.4023. Sanctions.

(a) HHSC or an MCO may propose to recoup funds paid to a program provider or FMSA as described in:

(1) §354.4009(d) of this subchapter (relating to EVV Visit Transaction and EVV Claim); and

(2) §354.4013(h) of this subchapter (relating to HHSC and MCO Compliance Reviews and Enforcement Actions.

(b) HHSC or an MCO may impose a vendor hold against a program provider or FMSA as described in §354.4013(d) and (g)(3) of this subchapter.

(c) HHSC or an MCO may propose to terminate the contract of program provider or FMSA as described in:

(1) §354.4007(e)(2)(B) of this subchapter (relating to EVV System); and

(2) §354.4013(b)(3) of this subchapter.

§354.4025. Administrative Hearing.

(a) If, as described in this subchapter, HHSC proposes to terminate the contract of a program provider or FMSA, proposes to recoup funds paid to a program provider or FMSA, or imposes a vendor hold on a program provider or FMSA, the program provider or FMSA may request an administrative hearing in accordance with §357.484 of this title (relating to Request for a Hearing).

(b) If, as described in this subchapter, an MCO proposes to terminate the contract of a program provider or FMSA, proposes to recoup funds paid to a program provider or FMSA, or imposes a vendor hold on a program provider or FMSA, the program provider or FMSA may appeal the proposed action in accordance with the MCO's policy.

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

Filed with the Office of the Secretary of State on August 25, 2023.

TRD-202303168
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 438-5241

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1 TAC §§354.4005, 354.4007, 354.4009, 354.4011, 354.4013

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code, §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Government Code, §531.024172, which provides that the Executive Commissioner of HHSC may adopt rules to implement an electronic visit verification system to electronically verify that personal care services or other services identified by HHSC are provided to Medicaid recipients.

The repeals affect Texas Government Code, §531.0055 and §531.024172 and Human Resources Code, §32.021.

§354.4005. Applicability.

§354.4007. EVV System.

§354.4009. Requirements for Claims Submission and Approval.

§354.4011. Member Rights and Responsibilities.

§354.4013. Additional Requirements.

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

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Karen Ray
Chief Counsel
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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 121. BEHAVIOR ANALYST

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 121, Subchapter A, §121.1 and §121.10; Subchapter B, §§121.20 - 121.22, 121.27, and 121.30; Subchapter C, §121.65; Subchapter D, §121.71 and §121.75; and Subchapter G, §121.90 and §121.95; new rules at Subchapter B, §121.26; Subchapter D, §§121.70, 121.72 - 121.74; Subchapter E, §§121.76 - 121.81; and Subchapter F, §121.85; and the repeal of existing rules at §§121.23, 121.24, 121.26, 121.50, 121.70, and 121.80 regarding the Behavior Analyst program; and the addition of subchapter titles to the existing chapter. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 121, implement Texas Occupations Code, Chapters 51, 111, and 506.

The Department is proposing amendments to Chapter 121 in response to its required four-year rule review and to reorganize its guidelines for the use of telehealth by behavior analysts. The amendments also update rule provisions to reflect current Department procedures, restructure the existing rules for better organization, and replace outdated rule language.

The Department published a Notice of Intent to Review its behavior analyst rules as part of the four-year rule review required under Government Code §2001.039 in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2575). The Department reviewed these rules and determined that the rules were still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 506, Behavior Analysts. The Commission re-adopted the rules in their existing form in the November 11, 2022, issue of the *Texas Register* (47 TexReg 7567).

The Department received public comments from the Texas Association for Behavior Analysis, Public Policy Group (TxABA PPG) in response to its Notice of Intent to Review. The re-adoption notice stated that the Department would address those public comments along with the suggested changes resulting from the Department's own review in a future proposed rulemaking. The Department initiated that rulemaking following the readoption of the rules at the conclusion of the Rule Review process.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Behavior Analyst Advisory Board at its meeting on December 1, 2022. The Advisory Board did not make any changes to the proposed rules and voted to recommend that the proposed rules be published in the *Texas Register* for public comment. The proposed rules were published in the January 6, 2023 issue of the *Texas Register* (48 TexReg 9). The Department received public comments from the Texas Medical Association (TMA) in response to that publication of the proposed rules. After the public comment period concluded, the department withdrew the proposed rules to make further amendments and updates, including amendments related to the public comments received, and now re-proposes the rules. The Department's responses to the public comments submitted are specifically addressed in this proposal.

The proposed rules were presented to and discussed by the Behavior Analyst Advisory Board at its meeting on August 15, 2023. The Advisory Board agreed to remove §121.77(b) as unnecessary and made no other changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules with the deletion of §121.77(b) be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules create new Subchapter A, General Provisions.

The proposed rules amend §121.1, Authority, to include Texas Occupations Code, Chapter 111.

The proposed rules amend §121.10, Definitions, to move definitions related to telehealth to Subchapter E, Telehealth. A definition for "applied behavior analysis" is added in response to a comment from TxABA PPG recommending this change. Other amendments clarify terms and remove definitions that are not used throughout the chapter.

The proposed rules create new Subchapter B, Licensing Requirements.

The proposed rules amend outdated language in §121.20, Applications, and relocate provisions to §121.20 from §121.23, Examinations, which was repealed.

The proposed rules amend outdated language in §121.21, Behavior Analyst Licensing Requirements, and relocate provisions to this section from §121.24, Educational Requirements, which was repealed.

The proposed rules amend outdated rule language in §121.22, Assistant Behavior Analyst Licensing Requirements, and move provisions to this section from repealed §121.24, Educational Requirements.

The TxABA PPG in its public comments during the rule review process noted that certification by the Behavior Analyst Certification Board (BACB), or its equivalent, is required to obtain and maintain licensure as a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst. TxABA PPG requested that the department clarify the meaning of equivalent and spell out education and experience requirements of an equivalent certification (proposed §§ 121.20-121.22).

The Department's response is that the Act defines a certifying entity as "the nationally accredited Behavior Analyst Certification Board or another entity that is accredited by the National Commission for Certifying Agencies or the American National Stan-

dards Institute to issue credentials in the professional practice of applied behavior analysis and approved by the department." Further, a behavior analyst or assistant behavior analyst must be certified as a Board Certified Behavior Analyst, a Board Certified Behavior Analyst-Doctoral, or a Board Certified Assistant Behavior Analyst, or have an equivalent certification issued by the certifying entity and meet the requirements specified in §§ 506.252 and 506.253 or 506.254 of the Act, as applicable, and Subchapter B of the rules. Those requirements include a BACB certification or an equivalent certification by an accredited, approved certifying entity, which requires compliance with the certifying entity's educational, examination, professional, ethical, and disciplinary standards.

One need only examine the BACB certification requirements to determine what an equivalent standard should include. Equivalent does not mean identical so evaluation of the certification is necessary. The department has been given the discretion to compare the accreditation and standards of a certifying entity to those of the BACB to approve or disapprove the certification it issues. Individuals who meet the requirements of the approved certifying entity and are issued a credential that has been approved as utilizing standards equivalent to those of the BACB may apply for licensure. The department does not evaluate individuals' qualifications other than to verify that they satisfy the requirements to obtain the license that are provided in the Act and the rules.

Once a certification that has been issued by an approved entity is deemed equivalent, then those who have obtained that certification may apply without having their certification re-examined. A certification issued by an approved certifying entity may be reevaluated at any time to ascertain that the standards for its issuance continue to be equivalent to those of the BACB, which may change over time. The discretion provided to the Department to evaluate certifying entities and the certifications they issue provides flexibility to evaluate the credential as a whole, given that each particular standard or requirement is unlikely to be identical to those of the BACB. The Department reserves the opportunity to elaborate more specifically regarding potential certifying entities and the standards for the certifications they issue as evaluation of additional certifying entities occurs, but has not specified equivalent requirements at this time.

The proposed rules repeal §121.23, Examinations. The text is relocated to the proposed §121.20.

The proposed rules repeal §121.24, Educational Requirements. The text is relocated to the proposed §§121.21-121.22.

The proposed rules repeal §121.26, Renewal, and replace it with new proposed §121.26, Renewal, due to extensive changes. The proposed section clarifies the requirements for renewal, including term of license, amends outdated rule language, and removes a provision preventing renewal of the license of a person who is in violation of rules or law at the time of renewal.

The proposed rules amend §121.27, Inactive Status by updating language and adding that there is no fee to move from an active to inactive license status.

The proposed rules amend §121.30, Exemptions, to align the rule with statutory provisions.

The proposed rules repeal §121.50, Reporting Requirements. Text is updated and relocated to the proposed new §121.74, Reporting Requirements.

The proposed rules create new Subchapter C, Behavior Analyst Advisory Board.

The proposed rules amend §121.65, Membership, to update language.

The proposed rules create new Subchapter D, Responsibilities of License Holders.

The proposed rules repeal §121.70, Administrative Practice Responsibilities of License Holders, and replace it with new proposed §121.70, Administrative Practice Responsibilities of License Holders, due to extensive changes. The proposed rules remove duplicative provisions from the section that are included in §121.95; move license display requirements to new §121.72; move recordkeeping requirements to §121.73; and relocate telehealth requirements to Subchapter E, Telehealth.

The proposed rules amend §121.71, Professional Services Practice Responsibilities of License Holders, to update language and to move telehealth requirements to Subchapter E, Telehealth.

The proposed rules add new §121.72, Display of License, which relocates license display provisions and limitations from §121.70.

The proposed rules add new §121.73, Recordkeeping Requirements, which relocates requirements from §121.70 and clarifies who owns and is responsible for maintaining patient records. In its public comments the TMA recommended that the reference to "providers" in §121.73(a)(2) be replaced with "license holder." The department has made this change because the term "provider" is used only in Subchapter E, Telehealth, to refer to license holders who provide telehealth services. In the balance of the rules, as in §121.73(a)(2), the term "license holder" is appropriate.

The proposed rules add new §121.74, Reporting Requirements, which relocates the rules from repealed §121.50 with updates.

The proposed rules amend outdated language in §121.75, Code of Ethics.

The proposed rules create new Subchapter E, Telehealth.

The proposed rules add new §121.76, Definitions Relating to Telehealth, which relocates telehealth definitions from §121.10 and aligns them with other department health professions programs. The TMA in its public comments in response to the earlier proposal of these rules requested that the proposed definition of "telehealth" in §121.76 be amended to incorporate the limitations contained in the underlying definition in Chapter 111, Occupations Code. Specifically, the TMA recommended the following definition:

Telehealth--The use of telecommunications and telecommunications technologies for the exchange of information from one site to another for the provision of behavior analysis services to a client from a provider, including for assessments, interventions, or consultations, to the extent permitted by the definition of "telehealth service" in Occupations Code Chapter 111.001(3) (citation corrected).

The department agrees that behavior analysis license holders, like all health professionals providing telehealth services in Texas, are subject to Occupations Code, Chapter 111, including the definition of "telehealth service." The Act does not define the term but Chapter 51 directly refers to the definition in Chapter 111. The definition in the rule has been amended to more

closely align with the Chapter 111 definition while remaining tailored to the practice of telehealth by behavior analysis license holders. In addition, Chapter 111 has been added to the citation of statutory authority under which the behavior analyst rules are promulgated.

The proposed rules add new §121.77, Service Delivery Methods, which relocates delivery methods defined in §121.10 and §121.70 and aligns them with other department health professions programs.

The proposed rules add new §121.78, Technology and Equipment Requirements, which relocates telecommunications requirements related to equipment and competencies from §§121.70-121.71.

The proposed rules add new §121.79, License Holder Responsibilities for Providing Telehealth Services and Using Telehealth, which relocates responsibilities for providers from §§121.70-121.71 and aligns them with other department health professions programs.

The proposed rules add new §121.80, Use of Facilitators with Telehealth, which moves facilitator requirements for telehealth from §121.71.

The proposed rules add new §121.81, Client Contacts and Communications, and relocates requirements regarding notifications to clients and complaint information from §121.70.

The proposed rules repeal §121.80, Fees, which has been moved to new Subchapter F.

The proposed rules create new Subchapter F, Fees.

The proposed rules add new §121.85, Fees, relocating the text from §121.80 without substantive changes.

The proposed rules create new Subchapter G, Enforcement.

The proposed rules amend §121.90, Basis for Disciplinary Action, to include a reference to the Chapter 100 rules and to provide more concise language for disciplinary actions that can be taken against a person.

The proposed rules amend §121.95, Complaints, adding a requirement to include an authorized representative in the complaint process and updating rule language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs, reductions in costs, or foreseeable implications relating to costs to the state or local governments as a result of enforcing or administering the proposed rules.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local governments, or foreseeable implications relating to revenues, as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be more clear and understandable rules, and more effective and efficient regulation of behavior analysts and assistant behavior analysts, which enhances the health, safety, and welfare of the public.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

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

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

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand the definitions for telehealth and telecommunications.

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

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules

do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at *https://ga.tdlr.texas.gov:1443/form/gcerules;* by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

16 TAC §§121.23, 121.24, 121.26, 121.50, 121.70, 121.80

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.23. Examination.

§121.24. Educational Requirements.

§121.26. Renewal.

§121.50. Reporting Requirements.

§121.70. Administrative Practice Responsibilities of License Holders.

§121.80. Fees.

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 August 25, 2023.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §121.1, §121.10

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.1. Authority.

This chapter is promulgated under the authority of Texas Occupations Code, Chapters 51, 111, and 506.

§121.10. Definitions.

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

(1) (No change.)

(2) Advertising--The offer to perform behavior analysis services by an individual or [~~solicitation for~~] business, including utilizing the titles "licensed behavior analyst" or "licensed assistant behavior analyst."

(3) - (4) (No change.)

(5) Applied behavior analysis - the practice of applied behavior analysis is defined and described in the Act, §506.003.

[~~(5) Asynchronous telehealth-- Store-and-forward telehealth practice including the transmission of images or data when the data transfer does not occur in real-time~~].

(6) Authorized representative--A person or entity that is legally authorized to represent the interests of a client and [~~to~~] perform functions including making decisions about behavior analysis services.

(7) Behavior Analyst Certification Board (BACB)--a certifying entity for persons practicing behavior analysis.

(8) Client--A person who is:

(A) an individual receiving behavior analysis services from a license holder;

(B) an authorized representative of the individual receiving behavior analysis services; or

(C) an individual, institution, school, school district, educational institution, agency, firm, corporation, organization, government or governmental subdivision, business trust, estate, trust, partnership, association, or any other legal entity not receiving behavior analysis services for its own treatment purposes.

[~~(8) Client--A person who is: receiving behavior analysis services from a license holder for the person's own treatment purposes, or a person or entity who is not receiving behavior analysis services from a license holder for their own treatment purposes including:~~]

[~~(A) an authorized representative of the person receiving behavior analysis services for the person's own treatment purposes; or~~]

[~~(B) an individual, institution, school, school district, educational institution, agency, firm, corporation, organization, government or governmental subdivision, business trust, estate, trust, partnership, association, or any other legal entity.~~]

[~~(9) Client site--The physical location of a client at the time behavior analysis services are practiced through synchronous or asynchronous telehealth. Also termed the origination site.~~]

(9) [~~(10)~~] Commission--The Texas Commission of Licensing and Regulation.

(10) [~~(11)~~] Department--The Texas Department of Licensing and Regulation.

(11) [~~(12)~~] Direct observation--A method of data collection that consists of observing the object of study in a particular situation or environment.

[~~(13) Direct supervision--Supervision of a person who is performing behavior analysis services with a client.~~]

(12) [~~(14)~~] Executive director--The executive director of the department.

[~~(15) Facilitator--An individual physically present with a client who assists with the delivery of behavior analysis services at the direction of a behavior analyst or assistant behavior analyst.~~]

(13) [~~(16)~~] Indirect supervision--Supervision of a person who performs behavior analysis services but which does not occur when services are being provided to a client. This may include behavioral skills training and delivery of performance feedback; modeling technical, professional, and ethical behavior; guiding behavioral case conceptualization, problem-solving, and decision-making repertoires; review of written materials such as behavior programs, data sheets, or reports; oversight and evaluation of the effects of behavioral service delivery; and ongoing evaluation of the effects of supervision.

(14) [~~(17)~~] License--A license issued under the Act authorizing a person to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

(15) [~~(18)~~] License holder--A person who has been issued a license in accordance with the Act to use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or to practice behavior analysis.

(16) [~~(19)~~] Multiple relationship--A personal, professional, business, or other type of interaction by a license holder with a client or with a person or entity involved with the provision of behavior analysis services to a client that is not related to, or part of, the behavior analysis services.

[~~(20) Provider--An individual who holds a current, renewable, behavior analyst or assistant behavior analyst license under this chapter, or who is authorized to provide behavior analysis services.~~]

[~~(21) Provider site--The physical location of a provider at the time behavior analysis services are furnished through synchronous or asynchronous telehealth. Also termed the distance site.~~]

(17) [~~(22)~~] Service agreement--A signed written contract for behavior analysis services. A service agreement includes responsibilities and obligations of all parties and the scope of behavior analysis services to be provided. A service agreement may be identified by other terms including treatment agreement, Memorandum of Understanding (MOU), or Individualized Education Program (IEP).

(18) [~~(23)~~] Supervision--Supervision of a person who performs behavior analysis services, and may include both direct and indirect supervision. A license holder may engage in direct supervision or indirect supervision in-person and on-site, through telehealth, or in another manner approved by the license holder's certifying entity.

[~~(24) Synchronous telehealth--telehealth services that require transmission of images, video, or data through a communication link for real-time interaction to take place.~~]

[~~(25) Telecommunications--Interactive communication by two-way transmission using telecommunications technology, including, but not limited to sound, visual images, or computer data.~~]

[~~(26) Telecommunications technology--Computers and equipment used or capable of use for purposes of telecommunications, other than analog telephone, email, or facsimile technology and equipment. Telecommunications technology includes, but is not limited to:~~]

[~~(A) compressed digital interactive video, audio, or data transmission;~~]

[~~(B) clinical data transmission using computer imaging by way of still-image capture, storage and forward; and~~]

[~~(C) other technology that facilitates the delivery of telehealth services.~~]

[~~(27) Telehealth service--The meaning of "telehealth service" is the same as defined in Occupations Code Chapter 111.~~]

(19) Telehealth--See definitions in Subchapter E. Telehealth.

(20) [~~(28)~~] Treatment plan--A written behavior change program for an individual client. A treatment plan includes consent, objectives, procedures, documentation, regular review, and exit criteria. A treatment plan may be identified by other terms including Behavior Intervention Plan, Behavior Support Plan, Positive Behavior Support Plan, or Protocol.

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

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SUBCHAPTER B. LICENSING REQUIREMENTS

16 TAC §§121.20 - 121.22, 121.26, 121.27, 121.30

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.20. Applications.

(a) Unless otherwise indicated, an applicant [~~applicants~~] for a license must submit all required information [~~on department-approved forms or~~] in a manner specified by the department.

(b) An applicant [~~Applicants~~] must submit the following:

(1) (No change.)

(2) the applicant's certification number by a behavior analyst certifying entity or other documentation of current certification by a behavior analyst certifying entity [~~, as~~] approved by the department; and

(3) the fee required under §121.85 [§121.80].

(c) Upon request, the [The] department may require an applicant to submit additional information or documentation for evaluation of an applicant's qualifications, including the following:

(1) - (7) (No change.)

(8) documentation demonstrating passage of the Board Certified Behavior Analyst examination or the Board Certified Assistant Behavior Analyst examination, as applicable, or an equivalent examination in applied behavior analysis offered by the certifying entity [successful completion of applicable examination requirements, including a pass/fail report];

(9) - (11) (No change.)

(d) - (g) (No change.)

§121.21. Behavior Analyst Licensing Requirements.

(a) To qualify for licensure as a behavior analyst, a person must:

(1) hold current certification as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst-Doctoral or equivalent, issued by the Behavior Analyst Certification Board or other certifying entity [its equivalent as] approved by the department; [and]

(2) be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; and [.]

(3) meet the educational requirements of the certifying entity for the Board Certified Behavior Analyst, the Board Certified Behavior Analyst-Doctoral, or an equivalent standard of the certifying entity approved by the department.

(b) A person [Persons] who is [are] subject to or has [have] received a disciplinary action by the certifying entity may be ineligible for a license.

(c) A person [Persons] who holds a [hold] current certification by the certifying entity but who does [do] not hold a current license may not:

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

(d) A person [Persons] who holds [hold] a current Texas license may use the title "licensed behavior analyst" or a reasonable abbreviation of the title that is accurate and not misleading, including "LBA," "L.B.A.," "TXLBA," or "TX. L.B.A."

(e) (No change.)

§121.22. Assistant Behavior Analyst Licensing Requirements.

(a) To qualify for licensure as an assistant behavior analyst, a person must:

(1) hold current certification as a Board Certified Assistant Behavior Analyst or equivalent, issued by the Behavior Analyst Certification Board or other certifying entity [its equivalent as] approved by the department;

(2) be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; [and]

(3) be in compliance with the applicable supervision requirements of the certifying entity at all times when practicing behavior analysis; and[.]

(4) meet the educational requirements of the certifying entity for the Board Certified Assistant Behavior Analyst or an equivalent standard of the certifying entity approved by the department.

(b) A person [Persons] who is [are] subject to or has [have] received a disciplinary action by the certifying entity may be ineligible for a license.

(c) A person [Persons] who holds a [hold] current certification by the certifying entity but who does [do] not hold a current license may not:

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

(d) A person [Persons] who holds [hold] a current Texas license may use the title "licensed assistant behavior analyst" or a reasonable abbreviation of the title that is accurate and not misleading, including "LaBA," "L.a.B.A.," "TXLaBA," or "TX. L.a.B.A." The letter "a" representing the word "assistant" may not be capitalized unless the abbreviation clearly represents the word "assistant," including "Lic. Asst. BA," "TX L. Assist. B.A." or similar.

(e) (No change.)

§121.26. Renewal.

(a) A behavior analyst and assistant behavior analyst license is valid for two years from the date of issuance and may be renewed biennially.

(b) A license holder is responsible for submitting all required documentation and information and paying the renewal application fee before the expiration date of the license.

(c) To renew a license, a license holder must:

(1) submit a completed renewal application in a manner prescribed by the department;

(2) provide a current certification number from the BACB or evidence of certification by a certifying entity approved by the department;

(3) successfully pass a criminal history background check; and

(4) submit the fee required under §121.85.

(d) The license holder must complete the human trafficking prevention training required under Texas Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(e) A person whose license has expired may not provide or offer to provide behavior analysis services or use the title or represent or imply that the person has the title of "licensed behavior analyst" or "licensed assistant behavior analyst" and may not use any variation of those titles.

(f) A person whose certification is on inactive status with the certifying entity may renew a license that is on inactive status with the department if the person is in compliance with the requirements for inactive status with the certifying entity.

(g) A person whose certification is on inactive status with the certifying entity may not renew a license that is on active status with the department.

§121.27. Inactive Status.

(a) To change a license to inactive status, an applicant must submit a complete application in a manner prescribed by the department [on a department-approved form]. No fee is required to change from active status to inactive status.

(b) A person whose license is on inactive status may not:

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

(3) participate in a supervision relationship with another license holder or unlicensed person [~~unless an active license is not required for the license holder's activity~~]; or

(4) (No change.)

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

(e) To change from an inactive license status to an active license status, a person must:

(1) submit a complete application in a manner prescribed by the department [~~on a department-approved form~~];

(2) pay the fee required under §121.85 [~~§121.80(b)(6)~~]; and

(3) (No change.)

§121.30. Exemptions.

(a) (No change.)

(b) A person who is no longer eligible for an exemption under §§506.051 - 506.059 of the Act must [~~Persons who are providing services for which a license is required under the Act or this chapter but who are not certified by a certifying entity may be required to~~] become certified by a certifying entity approved by the department and obtain a license under this chapter [~~in order~~] to continue to provide services.

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SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

16 TAC §§121.65 - 121.69

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.65. [~~Behavior Analyst Advisory Board;~~] Membership

(a) The Behavior Analyst Advisory Board shall be appointed under and governed by the Act and this subchapter [~~section~~]. The advisory board is established under the authority of Occupations Code, §506.101.

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

§121.66. [~~Advisory Board:~~] Duties.

(No change.)

§121.67. [~~Advisory Board:~~] Terms; Vacancies.

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

§121.68. [~~Advisory Board:~~] Officers.

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

§121.69. [~~Advisory Board:~~] Meetings.

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

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SUBCHAPTER D. RESPONSIBILITIES OF LICENSE HOLDER

16 TAC §§121.70 - 121.75

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.70. Administrative Practice Responsibilities of License Holders.

(a) Licenses issued by the department remain the property of the department and shall be surrendered to the department on demand.

(b) A license holder shall:

(1) inform the department of any violations of this chapter or the Act;

(2) promptly provide upon request any documents or information that satisfactorily demonstrates to the department the license holder's qualifications for certification by the certifying entity or for licensure by the department;

(3) report, in accordance with §121.74, to the department any fact that may affect a license holder's qualifications to hold a certification or license;

(4) truthfully respond in a manner that fully discloses all information in an honest, materially responsive and timely manner to a complaint filed with or by the department;

(5) not interfere with a department investigation or disciplinary proceeding in any way, including by misrepresentation or omission of facts to the department or using threats or harassment against any person;

(6) comply with any order issued by the commission or the executive director that relates to the license holder;

(7) promptly provide upon request documents, including treatment plans or service agreements, to demonstrate compliance with the Act, this chapter, or an order of the commission;

(8) comply with applicable professional and ethical standards and requirements including those of the license holder's certifying entity when creating a written agreement for services;

(9) upon revision or amendment of a written agreement for services, obtain the signatures of all parties;

(10) not delegate any services, functions, or responsibilities requiring professional competence to a person not competent or not properly credentialed. A license holder in private practice is responsible for the services provided by unlicensed persons employed or contracted by the license holder; and

(11) use electronic methods to create, amend, or sign documents, and accept signatures of clients on documents related to the provision of behavior analysis services, only in accordance with applicable law.

§121.71. Professional Services Practice Responsibilities of License Holders.

(a) A license holder shall:

(1) enter into a service agreement with a client, as defined in §121.10, when behavior analysis services are to be provided;

(A) (No change.)

(B) A behavior analyst shall create a written treatment plan when the service agreement provides for delivering treatment to an individual.

(C) (No change.)

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

(4) comply with all applicable requirements of the license holder's certifying entity, including the BACB Ethics Code for Behavior Analysts [~~Professional and Ethical Compliance Code for Behavior Analysts~~], when entering into service agreements and providing behavior analysis services.

(b) - (c) (No change.)

~~[(d) Professional Services Practice Responsibilities: Telehealth.]~~

~~[(1) Except to the extent it imposes additional or more stringent requirements, this subsection does not affect the applicability of any other requirement or provision of law to which a person is subject under the Act, this chapter, or other law, or by the person's certifying entity, when the person is functioning as a provider of telehealth services.]~~

~~[(2) The requirements of this section apply to the use of telehealth by behavior analysts and assistant behavior analysts licensed under this chapter.]~~

~~[(3) A license holder shall provide the same quality of services via telehealth as is provided during in-person sessions. A telehealth provider shall maintain a focus on evidence-based practice and identify appropriate meaningful outcomes for a client. When an established telehealth procedure is not available, a license holder shall notify a client or multi-disciplinary team, as appropriate, that the effectiveness of the procedure has not yet been established for the method, manner, or mode of treatment.]~~

~~[(4) A telehealth provider shall notify a client or multi-disciplinary team, as appropriate, of the conditions of telehealth services, including, but not limited to, the right to refuse telehealth services, options for service delivery, differences between in-person and remote service delivery methods, and instructions for filing and resolving complaints.]~~

~~[(A) A telehealth provider shall obtain client consent before services may be provided through telehealth.]~~

~~[(B) A provider shall consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth.]~~

~~[(C) If a client previously consented to in-person services, a telehealth provider shall obtain updated consent to include telehealth services.]~~

~~[(5) Telehealth providers shall not provide services by correspondence only, e.g., mail, email, or faxes, although these may be used as adjuncts to telehealth.]~~

~~[(6) The initial contact between a license holder and a client may be at the same physical location or through telehealth, as deemed appropriate by the license holder.]~~

~~[(7) Telehealth providers shall comply with all laws, rules, and certifying entity requirements governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.]~~

~~[(8) A telehealth provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of a client when providing services through telehealth.]~~

~~[(9) Supervision undertaken through telehealth must meet the standards of the certifying entity.]~~

~~[(10) Subject to the requirements and limitations of this section, a telehealth provider may utilize a facilitator at a client site to assist the provider in rendering telehealth services.]~~

~~[(11) A telehealth provider, before allowing a facilitator to assist a provider in rendering telehealth services, shall ascertain a facilitator's qualifications, training, and competence, as appropriate and reasonable, for each task a provider directs a facilitator to perform, and in the methodology and equipment a facilitator is to use.]~~

~~[(12) A facilitator may perform at a client site only the following tasks:]~~

~~[(A) a task for which a facilitator holds and acts in accordance with any relevant license, permit, or authorization required or exemption available under the Texas Occupations Code to perform the task; and]~~

~~[(B) those physical, administrative, and other tasks for which a telehealth provider determines a facilitator is competent to perform in connection with the rendering of behavior analysis services for which no license, permit, or authorization under the Texas Occupations Code is required or to which an exemption applies.]~~

~~[(13) A telehealth provider shall be able to see and hear a client and a facilitator, if used, via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions, when providing telehealth services.]~~

~~[(14) A telehealth provider shall not render telehealth services to a client if the presence of a facilitator is required for safe and effective service to a client and no qualified facilitator is available.]~~

[(15) A telehealth provider shall document the provider's telehealth services to the same standard as in-person services.]

§121.72. Display of License.

(a) A license holder shall display the current original license certificate issued by the department in the primary location of practice, if any, or in the license holder's business office.

(b) In the absence of a primary location of practice or business office, or when the license holder is employed in multiple locations, the license holder shall carry a current license identification card issued by the department.

(c) A license holder shall not:

(1) display a photocopy or other reproduction of a license certificate or identification card; or

(2) alter a license certificate or identification card.

§121.73. Recordkeeping Requirements.

(a) A license holder shall maintain legible and accurate records of behavior analysis services rendered.

(1) Records are the responsibility and property of the entity or individual who owns the practice or the practice setting.

(2) A license holder shall comply with all laws, rules, and certifying entity requirements governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.

(3) Records created as a result of treatment in a school setting shall be maintained as part of the student's permanent school record.

(b) A license holder practicing in an educational setting, school, learning center, or clinic shall comply with the recordkeeping requirements of the service setting or with the retention requirements of the certifying entity, if the latter are more stringent.

(c) Records shall be maintained for a minimum of the longer of:

(1) seven years following the termination of behavior analysis services;

(2) seven years following the date on which a minor client reaches the age of 22; or

(3) the retention period required by the certifying entity.

§121.74. Reporting Requirements.

(a) A license holder shall report the following in a manner prescribed by the department within ten days:

(1) Surrender, voluntary termination, or expiration of the license holder's certification;

(2) Commencement of inactive status of the license holder's certification;

(3) Limitation on or termination of the license holder's certification;

(4) Suspension, probation, reprimand, or any other discipline or revocation of the license holder's certification;

(5) A violation by the license holder of the certifying entity's requirements, the Act, this chapter, or an order of the commission;

(6) The license holder's placement on deferred adjudication or criminal conviction, other than a Class C misdemeanor traffic offense;

(7) The settlement of or judgment rendered in a civil lawsuit filed against the license holder relating to the license holder's professional behavior analysis practice; or

(8) An action against the license holder by a governmental agency or by a licensing or certification body.

(b) A license holder shall report a change in name or contact information to the department within thirty days after the change in a manner prescribed by the department.

§121.75. Code of Ethics.

(a) Individuals certified by the BACB are required to comply with the BACB Ethics Code for Behavior Analysts [Professional and Ethical Compliance Code for Behavior Analysts].

(1) The department may consult the requirements of the certifying entity or the BACB Ethics Code for Behavior Analysts [Professional and Ethical Compliance Code for Behavior Analysts] in the application and enforcement of the ethical standards included in this section.

(2) (No change.)

(b) A license holder [License holders] shall comply with the following ethical standards when providing behavior analysis services. A license holder [All license holders] shall:

(1) - (23) (No change.)

(c) (No change.)

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SUBCHAPTER E. TELEHEALTH

16 TAC §§121.76 - 121.81

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.76. Definitions Relating to Telehealth.

Unless the context clearly indicates otherwise, the following words and terms, when used in this subchapter, shall have the following meanings.

(1) Client site--The physical location of the client at the time that telehealth services are being provided.

(2) Facilitator--An individual physically present with a client who assists with the delivery of behavior analysis services through telehealth at the direction of a behavior analyst or assistant behavior analyst.

(3) Provider--An individual who provides telehealth services and holds a current:

(A) behavior analyst license under Texas Occupations Code §506.253 and §506.255; or

(B) assistant behavior analyst license under Texas Occupations Code §§506.254 - §506.255.

(4) Provider site--The physical location of the provider at the time the telehealth services are provided that is distant or remote from the client site.

(5) Telecommunications--Interactive communication of information at a distance by concurrent two-way transmission using telecommunications technology, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(6) Telecommunications technology--Computers, smart phones, and equipment, other than analog telephone, email, or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture, storage and forward;

(C) smart phones, or any audio-visual, real-time, or two-way interactive communication system; and

(D) other technology that facilitates the delivery of telehealth services.

(7) Telehealth--The use of telecommunications or telecommunications technology for the exchange of information from one site to another for the provision of behavior analysis services to a client from a provider.

(8) Telehealth services--The application of telecommunications technology to deliver behavior analysis services to a client who is physically located at a site other than the site where the provider is located.

§121.77. Service Delivery Models.

(a) Telehealth services may be delivered in a variety of ways, including, but not limited to:

(1) the store-and-forward model/electronic transmission which is an asynchronous electronic transmission of stored clinical data from one location to another;

(2) the clinician interactive model which is a synchronous, real-time interaction between the provider and client that may occur via telecommunication links; and

(3) the self-monitoring/testing model which occurs when the client receiving the services provides data to the provider without a facilitator present at the site of the client.

(b) A provider shall not provide services by correspondence only, e.g., mail, email, or facsimile, although these may be used as adjuncts to telehealth.

§121.78. Technology and Equipment Requirements.

(a) A provider shall use only telecommunications technology, as defined in this subchapter, to provide telehealth services. Modes of communication that do not utilize such telecommunications technology, including analog telephone, mail, email, or facsimile may be used only as adjuncts.

(b) A provider shall utilize telecommunications technology and other equipment only if:

(1) the provider is competent to use the equipment as part of the provider's telehealth services;

(2) the telecommunications technology and equipment located at the client site and at the provider site are:

(A) appropriate to the telehealth services to be provided and in good working order; and

(B) are of sufficient quality to allow the provider to deliver equivalent service and quality to the client as if those services were provided in person at the same physical location.

(3) the provider is able to see and hear the client and the facilitator, if used, via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions, when providing telehealth services; and

(4) the quality of electronic transmissions shall be adequate for the provision of an individualized client's telehealth service.

(c) A provider shall ensure that communications occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of a transmission itself for purposes of and to protect the transmission.

§121.79. License Holder Responsibilities for Providing Telehealth Services and Using Telehealth.

(a) Applicability.

(1) Except where noted, this subchapter applies to behavior analysts and assistant behavior analysts, as authorized under this subchapter.

(2) Except to the extent it imposes additional or more stringent requirements, this subchapter does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.

(b) Licensure and Scope of Practice.

(1) An individual shall not provide telehealth services to a client in the State of Texas, unless the individual is licensed by the department and qualifies as a provider, as that term is defined in this subchapter, or is otherwise legally authorized to do so.

(2) A provider may provide only those telehealth services that are within the course and scope of the provider's license and competence and delivered in accordance with the requirements of that license and pursuant to the terms and conditions set forth in this chapter.

(3) A provider may engage in direct observation, direct supervision, or indirect supervision in-person and on-site, through telehealth, or in another manner approved by the provider's certifying entity. Supervision provided through telehealth must meet the standards of the certifying entity.

(c) Competence and Standard of Practice; Code of Ethics.

(1) A provider shall be competent in both the type of services provided and the methodology and equipment used to provide the service.

(2) A provider shall comply with the code of ethics and scope of practice requirements in this chapter when providing telehealth services.

(3) The scope, nature, and quality of the services provided via telehealth shall be the same as the services provided during in-person sessions.

(4) A provider shall determine whether a particular service or procedure is appropriate to be provided via telehealth. A provider shall maintain a focus on evidence-based practice and identify appropriate meaningful outcomes for a client. When an established telehealth procedure is not available, the provider shall notify the client or multi-disciplinary team, as appropriate, that the effectiveness of the procedure has not yet been established for the method, manner, or mode of treatment.

(5) Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider through telehealth and the assistive tasks of the facilitator, if used.

(6) A provider shall:

(A) consider relevant factors including the client's behavioral, physical, and cognitive abilities in determining the appropriateness of providing services via telehealth;

(B) be aware of the client's level of comfort with the technology being used as part of the telehealth services; and

(C) be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, or management of a client when providing services through telehealth.

§121.80. Use of Facilitators with Telehealth.

(a) Subject to the requirements and limitations of this subchapter, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(b) A provider shall document whether a facilitator is used in providing telehealth services. If a facilitator is used, the provider shall document the tasks in which the facilitator provided assistance.

(c) Before allowing a facilitator to assist the provider in providing telehealth services, the provider shall ascertain and document the facilitator's qualifications, training, and competence, as appropriate and reasonable, in:

(1) each task the provider directs the facilitator to perform at the client site; and

(2) the methodology and equipment the facilitator is to use at the client site.

(d) A facilitator may only perform the following tasks at a client site:

(1) a task for which a facilitator holds and acts in accordance with any relevant license, permit, or authorization required or exemption available under the Texas Occupations Code to perform the task; and

(2) those physical, administrative, and other tasks that a provider determines a facilitator is competent to perform in connection with the rendering of behavior analysis services for which no license, permit, or authorization under the Texas Occupations Code is required or to which an exemption applies.

§121.81. Client Contacts and Communications.

(a) A provider shall notify a client, a client's authorized representative, or multi-disciplinary team, as appropriate, of the conditions of telehealth services, including, but not limited to, the right to refuse or discontinue telehealth services, options for service delivery, differences between in-person and remote service delivery methods, and instructions for filing and resolving complaints.

(b) A provider shall obtain client consent before services may be provided through telehealth. If a client previously consented to in-person services, a provider shall obtain updated consent to include telehealth services.

(c) The initial contact between a provider and client may be at the same physical location or through telehealth, as determined appropriate by the provider.

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

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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SUBCHAPTER F. FEES

16 TAC §121.85

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.85. Fees.

(a) All fees paid to the department are nonrefundable.

(b) Licensing fees are as follows:

(1) application and initial license, behavior analyst--$165

(2) application and initial license, assistant behavior analyst--$110

(3) renewal, behavior analyst--$165

(4) renewal, assistant behavior analyst--$110

(5) change, active status to inactive status--$0

(6) change, inactive status to active status--$25

(7) renewal of license on inactive status--renewal fees as stated in paragraphs (3) and (4)

(8) license duplicate or replacement--$25

(c) Late renewal fees for licenses issued under this chapter are prescribed under §60.83.

(d) The fee for a dishonored/returned check or payment is the fee prescribed under §60.82.

(e) The fee for a criminal history evaluation letter is the fee prescribed under §60.42.

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

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SUBCHAPTER G. ENFORCEMENT

16 TAC §121.90, §121.95

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 111, and 506, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 111, and 506. No other statutes, articles, or codes are affected by the proposed rules.

§121.90. Basis for Disciplinary Action.

(a) This section is authorized under Texas Occupations Code, Chapters 51 and 506.

(1) If a person violates any provision of Texas Occupations Code, Chapters 51, 111, 506, or any other applicable provision, this chapter, or a rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of the Texas Occupations Code and the associated rules.

(2) The enforcement authority granted under Texas Occupations Code, Chapters 51 and 506, and any associated rules may be used to enforce the Texas Occupations Code and this chapter.

(b) The department may consult the requirements of the certifying entity[,] and the BACB Ethics Code for Behavior Analysts [~~Professional and Ethical Compliance Code for Behavior Analysts,~~] in the application and enforcement of this chapter.

(c) The department will apply the requirements of this section consistent with the requirements, guidance, and interpretations of the certifying entity unless an alternate interpretation is reasonably necessary.

(d) The department may refer or report information to a certifying entity [~~information~~], including complaints, investigations, and violations of Texas law, rules, or orders that are or may be relevant to the qualifications of any person to obtain or maintain a certification.

(e) The commission has adopted rules for health-related programs in Chapter 100 pursuant to Texas Occupations Code §51.2031 and §51.501. Behavior analysis license holders are subject to the Ch. 100 rules, which include provisions related to telehealth.

(f) [~~(e)~~] The commission or the executive director may deny a license, place sanctions on [~~, revoke, suspend, probate, reprimand, or otherwise discipline~~] a license, or impose an administrative penalty[~~,~~] when a person through fraud, misrepresentation, concealment of a material fact, or in violation of the certifying entity's requirements, the Act, or this chapter:

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

§121.95. Complaints.

(a) (No change.)

(b) A license holder shall notify each client or a minor client's authorized representative of the name, mailing address, email address, telephone number, and website of the department for the purpose of directing complaints to the department. A license holder shall display this notification:

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

[~~(c) A license holder shall not make any alteration on official documents issued by the department.~~]

(c) [~~(d)~~] The commission has adopted rules in Chapter 100 [~~of this title~~] related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031.

(d) [~~(e)~~] A qualified person may assist the department in the review and investigation of complaints and is immune from liability related to these activities pursuant to Texas Occupations Code §51.252.

(e) [~~(f)~~] Provisions regarding the confidentiality of complaint and disciplinary information under this chapter are located in Texas Occupations Code §51.254.

(f) [~~(g)~~] The department may disclose a complaint or investigation and all information and materials compiled by the department in connection with the complaint or investigation to a person's certifying entity in accordance with Texas Occupations Code §51.254.

(g) [~~(h)~~] For purposes of this chapter, a health profession is a profession for which the enabling statute is located in Title 3, Texas Occupations Code, or that is determined to be a health profession under other law.

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

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

19 TAC §153.1011

The Texas Education Agency (TEA) proposes an amendment to §153.1011, concerning the mentor program allotment. The proposed amendment would modify the rule to further define the mentor program allotment as governed by Texas Education Code (TEC), Chapter 21.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 153.1011 describes the requirements for the Mentor Program Allotment, an optional, grant funded program to support mentorship as governed by TEC, §21.458, and detailed in TEC, §48.114. This allotment is for eligible districts that implement a mentorship program in accordance with TEC, §21.458.

The definition of beginning teacher would be modified in subsection (a)(1) so that uncertified beginning teachers may also be assigned mentors.

The proposed amendment to subsection (a)(3) would extend the definition of a mentor teacher to include individuals who have served as classroom teachers as defined by TEC, §5.001. This change would address the mentor teacher shortage concerns reported by districts.

The proposed amendment to subsection (b)(1) would update the mentor selection requirements for districts. New subsection (b)(1)(A) would require districts to prioritize the selection of current classroom teachers and retain documentation of selection processes in order to ensure that districts are prioritizing the selection of qualified mentors who have the most recent classroom experience.

New subsection (b)(1)(B) would introduce requirements that mentor teachers have instructional expertise in the area the beginning teacher is assigned and have classroom experience in the past three years. These changes would ensure that beginning teachers are matched with mentor teachers with recent instructional experience in their content areas.

To alleviate the workload of mentor teachers who currently serve as teachers of record, the proposed amendment to subsection (b)(2)(A) and (B) would reduce the average number of hours a mentor must serve as a teacher of record to be assigned a certain number of beginning teachers.

New subsection (b)(2)(C) would be added to allow mentors who are not currently classroom teachers to be assigned no more than six beginning teachers. Mentor teachers who are not currently classroom teachers would have more time and flexibility to be able to support more beginning teachers.

Subsection (b)(5)(A) would be amended to allow a beginning teacher to observe a highly effective teacher other than their mentor teacher. This change would allow beginning teachers opportunities for observation even if their mentor is not a current classroom teacher.

Subsection (b)(5)(B)(i)(IV) would be amended to add lesson internalization to the topics a mentor teacher may address with a beginning teacher. This addition would support mentor and beginning teachers in districts that have adopted high quality instructional materials.

Subsection (c) would be amended to remove the requirement for the commissioner of education to adopt a funding formula to determine the amount to which approved districts are entitled. Since this requirement is included in TEC, §48.114, this amendment would eliminate redundancy.

The proposed amendment to subsection (d)(1)(B) would increase the number of surveys administered from one to no more than two yearly. This would provide the agency, mentor training providers, and districts more data points throughout the year to continuously improve the implementation of mentoring programs.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification and enforcement, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by broadening the definition of mentor teacher to include an individual who serves or has served as a classroom teacher and has at least three years of recent classroom teaching experience; adding mentor selection criteria for districts; and adding to the topics a mentor teacher may address with a beginning teacher. The proposed rulemaking would also limit an existing regulation by removing the requirement that the commissioner annually adopt a funding formula for mentor program allotment funding.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Garcia has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with greater flexibility on the assignment of mentor teachers to support beginning

teachers within their district. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would require an additional 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. Subsection (d)(1)(B) currently requires 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. The proposed amendment would increase the number of surveys from one to no more than two annually in order to provide the agency, mentor training providers, and districts more data points throughout the year to continuously improve the implementation of mentoring programs.

PUBLIC COMMENTS: The public comment period on the proposal begins September 8, 2023, and ends October 9, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 8, 2023.A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.458, which allows districts to assign mentor teachers to work with new teachers, provides requirements around mentor program design and delivery, and requires the commissioner to adopt rules necessary to administer this statute; and TEC, §48.114, which provides a mentor program allotment to be used for funding eligible district mentor training programs; outlines permissible uses 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 amendment 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 of record 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--An individual who serves or has served as a [~~A~~] classroom teacher in Texas who provides effective support to help beginning teachers successfully transition into the teaching assignment. The term does not include an appraiser as defined by Texas Education Code (TEC), §21.351.

(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. A district [~~To qualify as a mentor teacher, a classroom teacher~~] must:

(A) prioritize the selection of current classroom teachers as mentor teachers using clear selection criteria, protocols, and hiring processes that align with requirements of this paragraph and TEC, §21.458, and retain documentation of such processes locally; and

(B) select mentor teachers who:

(i) [~~(A)~~] complete a research-based mentor and induction training program approved by the commissioner;

(ii) [~~(B)~~] complete a mentor training program provided by the district;

(iii) [~~(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~~]

(iv) [~~(D)~~] demonstrate interpersonal skills, instructional effectiveness, and leadership skills ; [~~.~~]

(v) have expertise, to the extent practicable, in effective instructional practices specifically for the grade levels and subjects to which the beginning teacher is assigned; and

(vi) have experience as a classroom teacher in the past three years.

(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, four or more [~~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 four [~~six~~] hours per instructional day ; or [~~.~~]

(C) six beginning teachers to an individual who serves as a full-time mentor.

(3) District mentor training program. A school district must:

(A) provide training to mentor teachers and any appropriate district and campus employees, including [~~such as~~] principals, assistant principals, 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 or other highly effective teachers 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 or lesson internalization ;

(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. The Texas Education Agency (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) surveys administered not more than twice yearly that may include the district's beginning teachers, mentor teachers, and any appropriate district and campus employees who work with beginning teachers [~~an annual survey of the district's beginning teachers and mentor teachers~~] for whom funds were used under TEC, §48.114. The surveys [~~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 TEA rescinding eligibility of a district's current or 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 at least once per year. 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 proposal and found it to be within the state agency's legal authority to adopt.

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Cristina De La Fuente-Valadez
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CHAPTER 157. HEARINGS AND APPEALS

SUBCHAPTER CC. HEARINGS OF APPEALS ARISING UNDER FEDERAL LAW AND REGULATIONS

19 TAC §157.1082

The Texas Education Agency (TEA) proposes an amendment to §157.1082, concerning a grantee's or subgrantee's opportunity for a hearing in an enforcement arising under federal law and regulations. The proposed amendment would update the citation to the federal regulation applicable to the rule.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 157.1082 describes actions TEA may take if a grantee or subgrantee of a federal grant materially fails to comply with any term of an award. The proposed amendment to §157.1082 would update the federal citation that allows the actions specified in the rule. No substantive changes would be made.

FISCAL IMPACT: Von Byer, general counsel, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: The proposal would ensure that rule language is based on current law. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins September 8, 2023, and ends October 9, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 1, 2023. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under 2 Code of Federal Regulations, §200.339, which addresses federally required appeal processes associated with enforcement of federal grants.

CROSS REFERENCE TO STATUTE. The amendment implements 2 Code of Federal Regulations, §200.339.

§157.1082. Grantee's or Subgrantee's Opportunity for a Hearing in an Enforcement Action.

(a) The Texas Education Agency (TEA) may take one or more of the following actions specified in 2 [~~34~~] Code of Federal Regulations, §200.339 [~~§80.43(a)~~], as appropriate in the circumstances, if a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a federal statute or regulation as an assurance, in a state plan or application, in a notice of award, or elsewhere:

(1) temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency;

(2) disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

(3) wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(4) withhold further awards for the program; or

(5) take other remedies that may be legally available.

(b) In taking enforcement action, TEA shall provide the grantee or subgrantee an opportunity for any hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

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

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §329.1. General Licensure Requirements and Procedures to clarify changes in contact information that need to be reported to the board and requests for name changes.

The amendment eliminates reference to an address of record, changes the wording from residential to home address, and adds phone numbers and email addresses to the change of information that a licensee is required to report to the board. Additionally, the amendment clarifies that name changes must be submitted on a form prescribed by the board with the appropriate fee and a copy of legal documentation enacting the name change, and eliminates the requirement of making a name change with the renewal application.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there would be no loss of revenue, and there would be no fiscal implication to units of local government 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 the amendment is in effect the public benefit will be to ensure that the board has updated information on all licensees. There will be no economic cost to licensees who update their contact information, and no increase in cost for name changes on licenses.

Local Employment Economic Impact Statement

The amendment is 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

During the first five-year period this amendment is in effect, the impact on government growth is as follows:

(1) The proposed rule amendment will neither create nor eliminate a government program.

(2) The proposed rule amendment will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendment will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendment will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed amendment will revise an existing rule by clarifying changes in contact information that need to be reported to the board and the process for requesting for name changes on licenses.

(6) The proposed rule amendment will neither repeal nor limit an existing regulation.

(7) The proposed rule amendment will neither increase nor decrease the number of individuals subject to the rule's applicability.

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

Takings Impact Assessment The proposed rule amendment 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 because the amendments will not increase costs to regulated persons.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, 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 amendment is proposed under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

Cross-reference to Statute

The proposed amendment implements provisions in Sec. 453.151, Occupations Code that pertains to information maintained by the board.

§329.1. General Licensure Requirements and Procedures

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

(g) Changes to licensee information.

(1) Applicants and licensees must notify the board in writing of changes in home, [~~address of record, and residential,~~] mailing, or business addresses and phone numbers and email addresses within 30 days of the change. [~~For a name change at time of renewal, the licensee must submit a copy of the legal document enacting the name change with the renewal application.~~]

(2) A request for name change must be submitted on a form prescribed by the board with the appropriate fee and a copy of legal documentation enacting the name change.

(h) - (i) (No change.)

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

Filed with the Office of the Secretary of State on August 24, 2023.

TRD-202303140
Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 305-6900

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22 TAC §329.6, §329.7

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §329.6. Licensure by Endorsement and §329.7. Exemptions from Licensure pertaining to military service member exemption pursuant to SB 422 amendment of Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SERVICE MEMBERS AND MILITARY SPOUSES, of Chapter 55, Occupations Code during the 88th Legislative Session.

The amendment is proposed in order to authorize a military service member to engage in the practice of physical therapy without obtaining a license as a physical therapist or physical therapist assistant if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the licensure in this state and the military service member is stationed at a military installation in this state.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there would be no loss of revenue, and there would be no fiscal implication to units of local government 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 the amendment is in effect the public benefit will be increasing consumer access to physical therapy services by reducing regulatory barriers to interstate mobility of qualified military service members. There will be no economic cost to a military service member who qualifies for the exemption from obtaining licensure as a physical therapist or physical therapist assistant.

Local Employment Economic Impact Statement

The amendment is 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

During the first five-year period this amendment is in effect, the impact on government growth is as follows:

The proposed rule amendment will neither create nor eliminate a government program.

(2) The proposed rule amendment will neither create new employee positions nor eliminate existing employee positions.

(3) The proposed rule amendment will neither increase nor decrease future legislative appropriations to the agency.

(4) The proposed rule amendment will neither require an increase nor a decrease in fees paid to the agency.

(5) The proposed amendment will revise an existing rule by including military service members as qualifying for an exemption from licensure.

(6) The proposed rule amendment will neither repeal nor limit an existing regulation.

(7) The proposed rule amendment will neither increase nor decrease the number of individuals subject to the rule's applicability.

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

Takings Impact Assessment The proposed rule amendment 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 because the amendments will not increase costs to regulated persons and are necessary to implement legislation that amended Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SERVICE MEMBERS AND MILITARY SPOUSES of Chapter 55, Occupations Code during the 88th Legislative Session.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 1801 Congress Ave, Suite 10.900, 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

Rulemaking authority is expressly granted to a state agency in SECTION 5. of SB 422, 88th Legislative Session.

Cross-reference to Statute

The proposed amendment implements changes made to Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SERVICE MEMBERS AND MILITARY SPOUSES of Chapter 55, Occupations Code during the 88th Legislative Session.

§329.6. Licensure by Endorsement.

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

(c) Licensure of a Military Service Member, Military Veteran, or Military Spouse. The board will waive the application fee and will expedite the issuance of a license by endorsement to a military service member, military veteran, or spouse of a military service member. The applicant must provide official documentation of active duty status or veteran status or the active duty status of the spouse.

(1) A military service member or military spouse may qualify to practice in this state under the exemption described in §329.7(b)(5) Exemptions from Licensure if the military service member or military service member to whom a military spouse is married is stationed at a military installation in this state.

(2) A military service member, military spouse or veteran may qualify to practice in this state under a Compact privilege as described in CHAPTER 348. PHYSICAL THERAPY LICENSURE COMPACT.

(d) (No change.)

§329.7. Exemptions from Licensure.

(a) (No change.)

(b) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board and must notify the board of their intent to practice in the state.

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

(5) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is a military service member or military spouse for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas.

(A) The military service member or military spouse must submit written notification including the following:

(i) proof of the military service member or military spouse's residency in this state including a copy of the permanent change of station order for the military service member to whom the spouse is married;

(ii) a copy of the military service member or military spouse's military identification card; and

(iii) a list of the jurisdictions in which the military service member or military spouse has held or currently holds a license.

(B) The board will issue a written confirmation stating that:

(i) licensure in other jurisdictions has been verified;

(ii) the military service member or military spouse is authorized to practice physical therapy in the state; and

(iii) authorization does not exceed three years from the date the confirmation is received.

(c) (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 August 24, 2023.

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Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 305-6900

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board or TSBPE) proposes an amendment to the existing rule at 22 Texas Administrative Code (TAC), Chapter 361, §361.1(18) which concerns definitions and general provisions. The proposed amendment is referred to as the "proposed rule amendment."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The Board, under its general rule-making authority in Section 1301.251(2) of Texas Occupations Code and part of its four-year rule review of the existing rules at 22 Texas Administrative Code (TAC) Chapter 361, initiated a rule simplification initiative to make the rules easier to understand and enforce by eliminating unnecessary language, adding clarifying language, and restructuring regulations to reduce regulatory barriers and make the rules more efficient.

During that rule review, the Board recognized that technology with the capability to visually stream or project the job site in real-time such as Facetime, Zoom, etc. may be successfully utilized to perform on-the-job oversight and direct supervision of apprentices and licensees in the field. It is believed that given the pandemic and related, necessary social-distancing practices, virtual supervision was utilized in the plumbing industry since 2020 as a matter of necessity.

The proposed rule amendment creates the option for a Responsible Master Plumber (RMP) to choose to use virtual, visual, real-time supervision in certain conditions to directly supervise work done under their authority and responsibility. Section 361.1(18) defines Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include virtual visual, real-time communication for registrants and licensees with 2000 hours of work documented by a RMP on non-commercial jobs, not involving gas appliances.

The proposed rule amendment does not create any affirmative duty on or regulation of registrants or licensees. The proposed rule amendment does not alleviate the responsibility of the RMP from adequate supervision or from ensuring that work is performed to the standards of the applicable code. It is in the RMP's discretion to utilize optional technology as they deem it appropriate given their job sites, staff, technological capacities. Should inspection or investigation be done on the job site, any present licensee or registrant must demonstrate that real-time, visual communication is successful and effective.

SECTION BY SECTION SUMMARY

Section 361.1(18) Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include virtual visual, real-time communication for registrants and licensees that hold at least 2000 hours of experience documented by a Responsible Master Plumber (RMP). The virtually supervised registrant or licensee may perform non-commercial work not involving gas appliances.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director for the Board (Executive Director), has determined that for the first five-year period the proposed rule amendment is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the proposed rule amendment is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFITS

The Executive Director has determined that for each of the first five years the proposed rule amendment is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule amendment will be to have fewer regulatory barriers.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE RULE

The Executive Director has determined that for the first five years the proposed rule amendment is in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rule amendment.

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

Given that the proposed rule amendment does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the proposed rule amendment is not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed rule amendment is in effect, the Board has determined the following: (1) the proposed rule amendment does not create or eliminate a government program; (2) implementation of the proposed rule amendment does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule amendment does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rule amendment does not require an increase or decrease in fees paid to the agency; (5) the proposed rule amendment does not create a new regulation; (6) the proposed rule amendment does not expand, limit, or repeal an existing regulation; (7) the proposed rule amendment does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule amendment does not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed rule amendment. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

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

The proposed rule amendment will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rule amendment. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed rule amendment. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed rule amendment may be submitted by mail to Patricia Latombe at 929 East 41st Street, Austin, Texas 78765, or by email to rule.comment@tsbpe.texas.gov with the subject line "Rule Amendment." All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Texas Occupations Code authorizes the Texas State Board of Plumbing Examiners to adopt rules as necessary to implement the Chapter. No other statutes or rules are affected by the proposal.

§361.1. Definitions.

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

(1) APA--The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

(2) Adopted Plumbing Code--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.

(3) Advisory Committee--A committee appointed by the presiding officer of the board created to assist the board in exercising its powers and duties.

(4) Appliance Connection--An appliance connection procedure using only a code-approved appliance connector that does not require cutting into or altering the existing plumbing system.

(5) Applicant--An individual seeking to obtain a license, registration or endorsement issued by the Board.

(6) Board--The Texas State Board of Plumbing Examiners.

(7) Board Member--An individual appointed by the governor and confirmed by the senate to serve on the Board.

(8) Building Sewer--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(9) Certificate of Insurance--A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in the Plumbing License Law and Board Rules.

(10) Chief Examiner--An employee of the Board who, under the direction of the Executive Director, coordinates and supervises the activities of the Board examinations and registrations.

(11) Cleanout--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(12) Code-Approved Appliance Connector--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(13) Code-Approved Existing Opening--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code-approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(14) Complaint--A written complaint filed with the Board against a person whose activities are subject to the jurisdiction of the Board.

(15) Contested Case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(16) Continuing Professional Education or CPE--Approved courses/programs required for a licensee or registrant.

(17) Director of Enforcement--An employee of the Board who meets the definition of "Field Representative" and, under the direction of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(18) Direct Supervision--

(A) The on-the-job oversight and direction of a registered Plumber's Apprentice or licensee performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(iii) This oversight may include virtual visual, real-time communication, on non-commercial jobs not involving gas appliances, for registrants and license holders with 2,000 hours of experience documented by a responsible master plumber.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Registered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(19) Endorsement--A certification issued by the Board as an addition to a Master Plumber, Plumbing Inspector, or Journeyman Plumber License or a Plumber's Apprentice Registration, including a Drain Cleaner Registration, a Drain Cleaner-Restricted Registration, and a Residential Utilities Installer Registration.

(20) Executive Director--The executive director of the Texas State Board of Plumbing Examiners who is employed by the Board as the executive head of the agency.

(21) Field Representative--An employee of the Board who is:

(A) knowledgeable of the Plumbing License Law and of municipal ordinances related to plumbing;

(B) qualified by experience and training in good plumbing practice and compliance with the Plumbing License Law;

(C) designated by the Board to assist in the enforcement of the Plumbing License Law and Board rules;

(D) licensed by the Board as a plumber; and

(E) hired to:

(i) make on-site license and registration checks to determine compliance with the Plumbing License Law;

(ii) investigate complaints; and

(iii) assist municipal plumbing inspectors in cooperative enforcement of the Plumbing License Law.

(22) Journeyman Plumber--An individual licensed under the Plumbing License Law who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(23) License--A license, registration, certification, or endorsement issued by the Board.

(24) Licensing and Registering--The process of granting, denying, renewing, reinstating, revoking, or suspending a license, registration or endorsement.

(25) Maintenance Man or Maintenance Engineer--An individual who:

(A) is an employee, and not an independent contractor or subcontractor;

(B) performs plumbing maintenance work incidental to and in connection with other employment-related duties; and

(C) does not engage in plumbing work for the general public.

(D) For the purposes of paragraph 25(B), "incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. It does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters.

(E) An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections.

(26) Master Plumber--An individual licensed under the Plumbing License Law who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, who is knowledgeable about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(27) Medical Gas Piping Installation Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to, oxygen, nitrous oxide, medical air, nitrogen, or medical vacuum.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect medical gas and vacuum system installations.

(28) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install a multipurpose residential fire protection sprinkler system in a one or two family dwelling.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect a multipurpose residential fire protection sprinkler system.

(29) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(30) Military spouse--A person who is married to a military service member who is currently on active duty.

(31) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(32) One-Family Dwelling--A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(33) Party--A person or state agency named or admitted as a party to a contested case.

(34) Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(35) Person--An individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(36) Petitioner--A person requesting the Board to adopt, amend or repeal a rule pursuant to §2001.021 of the Texas Government Code and the Board Rules.

(37) Plumbing--

(A) All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, multipurpose residential fire protection sprinkler systems or any combination of these that: supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage.

(B) The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the treatment of rainwater to supply a plumbing fixture or appliance. The term "service" includes, but is not limited to, cleaning a drain or sewer line using a cable or pressurized fluid.

(38) Plumbing Company--A person who engages in the plumbing business.

(39) Plumbing Inspection--Any of the inspections required in the Plumbing License Law, including any check of multipurpose residential fire protection sprinkler systems, pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(40) Plumbing Inspector--Any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(41) Plumbing License Law or PLL--Chapter 1301 of the Texas Occupations Code.

(42) Pocket Card--A card issued by the Board which:

(A) certifies that the holder has a Responsible Master Plumber License, Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or a Plumber's Apprentice Registration; and

(B) lists any Endorsements obtained by the holder.

(43) Political Subdivision--A political subdivision of the State of Texas that includes a:

(A) city;

(B) county;

(C) school district;

(D) junior college district;

(E) municipal utility district;

(F) levee improvement district;

(G) drainage district;

(H) irrigation district;

(I) water improvement district;

(J) water control improvement district;

(K) water control preservation district;

(L) freshwater supply district;

(M) navigation district;

(N) conservation and reclamation district;

(O) soil conservation district;

(P) communication district;

(Q) public health district;

(R) river authority; and

(S) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(44) P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(45) Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. 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 the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(46) Respondent--A person charged in a complaint filed with the Board.

(47) Responsible Master Plumber or RMP--A licensed Master Plumber who:

(A) allows the person's Master Plumber License to be used by only one plumbing company for the purpose of offering and performing plumbing work;

(B) is authorized to obtain permits for plumbing work;

(C) assumes responsibility for plumbing work performed under the person's license;

(D) has submitted a certificate of insurance as required by the Plumbing License Law and Board Rules; and

(E) When used in Board forms, applications or other communications by the Board, the abbreviation "RMP" shall mean Responsible Master Plumber.

(48) Registration--A document issued by the Board to certify that the named individual fulfilled the requirements of the PLL and Board Rules to register as a Plumber's Apprentice.

(49) Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision--The general oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber, or licensed plumber designated by the RMP.

(51) System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee--An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, or successfully completed a career and technology education program, who constructs, installs, changes, repairs, services, or renovates plumbing for one-family or two-family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two-Family Dwelling--A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) Water Supply Protection Specialist--A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board to engage in customer service inspections, as defined by rule of the Texas Commission on Environmental Quality, and the installation, service, and repair of plumbing associated with the treatment, use, and distribution of rainwater to supply a plumbing fixture or appliance.

(55) Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting.

(56) Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

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 August 28, 2023.

TRD-202303175
Lynn Latombe
General Counsel
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 936-5216

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 228. RETAIL FOOD ESTABLISHMENTS

SUBCHAPTER B. MANAGEMENT AND PERSONNEL

25 TAC §228.33

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §228.33, concerning Food Allergen Awareness Poster Required.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with Senate Bill (S.B.) 812, 88th Legislature, Regular Session, 2023. S.B. 812 amends the Texas Health and Safety Code to add §437.027, requiring retail food establishments to display a poster relating to food allergen awareness in an area of the establishment regularly accessible to the establishment's food service employees. S.B. 812 prescribes the content of the poster at Texas Health and Safety Code §437.027(b).

SECTION-BY-SECTION SUMMARY

Proposed new §228.33 requires retail food establishments to place a food allergen awareness poster in an area accessible to employees and outlines the content of the poster.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of DSHS employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to DSHS;

(5) the proposed rule will create a new rule;

(6) the proposed rule will not expand, limit, or repeal an existing rule;

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

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

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

Donna Sheppard has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The cost of a food allergen awareness poster is negligible to the food establishments that must comply with the rule and is considered in balance with the positive effect on consumer safety. There are approximately 12,000 retail food establishments requiring the food allergen awareness poster under DSHS jurisdiction. DSHS is unable to estimate the number of food establishments under local jurisdiction that must also comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas and to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Dr. Timothy Stevenson, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be increased employee awareness of the presence of food allergens in retail food establishments and the danger that those allergens present to consumers with food allergies. Employee awareness, in turn, will enhance both prevention of and response to allergenic incidents.

Donna Sheppard has also determined that for the first five years the rule is in effect, persons required to comply with the proposed rule may incur a one-time, negligible cost of not more than $50.00 to obtain a food allergen awareness poster.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to DSHS Consumer Protection Division, Food and Drug Section, Retail Food Safety Operations, Mail Code 1987, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, hand-delivered to 1100 West 49th Street, Austin, Texas 78756, or by email to foodestablishments@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 23R052" in the subject line.

STATUTORY AUTHORITY

The new rule is authorized by Texas Health and Safety Code §437.027(c), which directs the Executive Commissioner of HHSC to adopt rules to implement legislation; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS, and for the administration of Texas Health and Safety Code Chapter 1001.

The proposed new rule implements Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 437 and 1001.

§228.33. Food Allergen Awareness Poster Required.

(a) A food establishment shall display a poster relating to food allergen awareness in an area of the establishment regularly accessible to the establishment's food service employees.

(b) The food allergen awareness poster shall be identical or substantially similar to the sample poster displayed on the department website. If not identical, the poster shall, at a minimum, display the following information in a clear and straightforward manner:

(1) the risk of an allergic reaction to a food allergen;

(2) symptoms of an allergic reaction;

(3) the major food allergens, as determined by federal law and regulations of the United States Food and Drug Administration;

(4) the procedures for preventing an allergic reaction; and

(5) appropriate responses for assisting an individual who is having an allergic reaction.

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 August 25, 2023.

TRD-202303167
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 834-6753

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 555. NURSING FACILITY ADMINISTRATORS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Title 26, Part 1, Chapter 555, Nursing Facility Administrators, amendments to §555.2, concerning Definitions, §555.11, concerning Application Requirements, §555.12, concerning Licensure Requirements, §555.13, concerning Internship Requirements, §555.18, concerning Examinations and Requirements to Take the Examinations, §555.32, concerning Provisional License, and §555.35, concerning Continuing Education Requirements for License Renewal.

BACKGROUND AND PURPOSE

The purpose of the proposal is to clarify requirements and provide additional options to qualify for nursing facility administrator (NFA) licensure. The proposal updates definitions and associated references for consistency with changes made by the National Association of Long Term Care Administrator Boards (NAB), regarding both educational domains for testing and the company conducting the NAB examination. The proposal also adds an additional option for persons to qualify for licensure, and a greater degree of flexibility for the administrator-in-training (AIT) internship. Other non-substantive changes are for clarification.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §555.2 revises definitions for NFA rules. Paragraph (8) updates the names and number of educational domains used by the NAB. Paragraph (12) clarifies that HHSC is responsible for NFA licensure in Texas. Paragraph (23) clarifies that NAB is the national authority on NFA licensure, credentialing, and regulation. Paragraph (28) removes extraneous language from the definition of the NFA advisory committee. Paragraph (30) removes the "professional examination services (PES)" name of the company that administers the NAB licensure exam and renumbers the paragraphs accordingly. Paragraph (35) revises the Texas Administrative Code citation for substandard quality of care.

The proposed amendment to §555.11 revises the requirements for an NFA licensure application. Subsection (a)(5) reduces the number of academic credits required for NFA candidates who hold a transcript with coursework in the updated NAB domains that is not reflected by the baccalaureate degree. Subsections (b) and (c) have non-substantive edits to update rule citations.

The proposed amendment to §555.12 provides additional options for licensure requirements. Subsection (a)(1)(A) reduces the number of academic credits in long-term care administration required for candidates who hold a baccalaureate degree that includes coursework in the updated NAB domains. Subsection (a)(2) updates the NAB domains referenced for applicants holding a baccalaureate degree in health administration, health services administration, health care administration, or nursing. Subsection (a)(3) provides an additional option for persons to qualify for NFA licensure: holding a baccalaureate degree with coursework in the NAB domains and one year of experience as assistant administration of record or administrator of record at a facility in another state. Subsection (a)(4) and (5) have non-substantive renumbering edits. Subsection (a)(6) describes an option for application for candidates with a license issued by another state.

The proposed amendment to §555.13 provides more flexibility for the AIT internship. Subsection (a)(2) removes the requirement for the internship to be completed in a facility with a minimum of 60 beds and instead allows the internship to be completed in a facility of any size. Subsection (a)(6) and (7) have non-substantive renumbering edits. Subsection (a)(8) requires the internship to be completed at the same facility at which the AIT's preceptor serves as NFA. Subsection (b)(2) updates the referenced rule.

The proposed amendment to §555.18 makes a minor editorial change, replacing the word "on-line" with "online" and removes a reference to the name of the company that administers the NAB examination.

The proposed amendment to §555.32 clarifies requirements for provisional NFA licenses. Subsection (a)(4)(A) removes equivocal language around "substantially similar" licensing requirements in other states. Subsection (e) stipulates that if internship hours in another state do not meet requirements in §555.13, the provisional licensee must complete the required internship hours under the supervision of an HHSC-licensed preceptor.

The proposed amendment to §555.35 makes non-substantive edits to clarify requirements for continuing education for license renewal. Subsection (a)(2) revises the number of NAB domains from five to four, which aligns with NAB consolidation of the domains. Subsection (a)(4) makes non-substantive edits to clarify that at least six hours of continuing education in ethics is required. Subsection (c) replaces "three-semester hour" with "three-semester-hour" in reference to a course requirement.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will not create a new rule;

(6) the proposed rules will not expand, limit, or repeal an existing rule;

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

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

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

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

A nursing facility is not a small business or micro-business but may be located in a rural community. The proposed rules are not expected to have an adverse economic effect on small businesses, micro-businesses, or rural communities because there are no requirements to alter current business practices, and there are no new fees or costs imposed on those required to comply.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COST TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from having current information from and regarding the national authority on NFAs, clarified requirements regarding NFA licensure, and a greater degree of flexibility should a person choose to enter the profession.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because any costs incurred by current or prospective NFAs under the proposed rules will be costs that would otherwise be incurred through the current NFA licensure process.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Caroline Sunshine, Policy Specialist, by email to HHSCLTCR-Rules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R103" in the subject line.

SUBCHAPTER A. GENERAL INFORMATION

26 TAC §555.2

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The amendment gives effect to Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §242.302.

§555.2. Definitions.

The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

(1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure) or Texas Penal Code Chapter 22 (relating to Assaultive Offenses), sexual harassment, sexual coercion, or sexual assault.

(2) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(3) Administrator-in-training (AIT)--[]A person undergoing an internship under a HHSC-approved certified preceptor.

(4) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the HHSC Licensing and Credentialing Section.

(5) Applicant--A person applying for a Texas nursing facility administrator (NFA) license.

(6) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, Space Force, or Marine Corps of the United States, including reserve units of those military branches.

(7) Complaint--An allegation that an NFA violated one or more of the licensure rules or statutory requirements.

(8) Domains of the National Association of Long Term Care Administrator Boards (NAB)--The four [~~five~~] categories for education and continuing education of the NAB, which are care, services, and supports; operations; environment and quality; and leadership and strategy. [~~resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.~~]

(9) Formal hearing--A hearing held by the State Office of Administrative Hearings to adjudicate a sanction taken by HHSC against an NFA.

(10) Good standing--In Texas an NFA is in good standing if the NFA is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by HHSC. An NFA licensed or registered in another state is in good standing if the NFA is in compliance with the NFA licensing or registration rules in the other state and, if applicable, the terms of any sanction imposed by the other state.

(11) Health services executive (HSE)--An individual who has entry-level competencies in [~~of~~] a nursing facility, assisted living community, or home and community-based service provider in this state [~~jurisdiction~~] or another state [~~jurisdiction~~]. The HSE has met NAB's minimum standards for qualification as an HSE.

(12) HHSC--The Texas Health and Human Services Commission. HHSC is responsible for NFA licensure in Texas.

(13) Internship--The training period in a nursing facility for an AIT. When HHSC accepts internship hours completed in another state, the hours must be completed in a facility that qualifies as a nursing facility or nursing home under the laws of the other state.

(14) License--An NFA license or provisional license.

(15) Licensee--A person licensed by HHSC as an NFA.

(16) Long-term Care Regulation--The department of HHSC responsible for long-term care regulation, including determining nursing facility compliance with licensure and certification requirements and the regulation of NFAs.

(17) Management experience--Full-time employment as a department head, assistant nursing facility administrator, or licensed professional supervising two or more employees in a nursing facility, including a nursing facility outside of Texas, or skilled nursing hospital unit.

(18) Military service member--A person who is on active duty.

(19) Military spouse--A person who is married to a military service member.

(20) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(21) Misappropriation of resident property--Taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(22) NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas. The NAB examination consists of two modules: Core of Knowledge and Line of Service.

(23) National Association of Long Term Care Administrator Boards (NAB)--The national authority on licensing, credentialing, and regulating administration of organizations along the continuum of long-term care. NAB sets the national standards and evaluation requirements for NFAs. [~~State boards or agencies responsible for the licensure of NFAs.~~]

(24) National Continuing Education Review Service (NCERS)--The part of NAB that approves and monitors continuing education activities for NFAs.

(25) Neglect--Failure to provide goods or services, including medical services, that are necessary to avoid physical or emotional harm, pain, or mental illness.

(26) Nursing facility--A facility licensed in accordance with THSC Chapter 242.

(27) Nursing Facility Administrator (NFA)--An individual licensed by HHSC to engage in the practice of nursing facility administration, regardless of whether the individual has an ownership interest in the facility.

(28) Nursing Facility Administrators Advisory Committee (NFAAC)--The advisory committee established by THSC §242.303 [~~(the text of Subchapter I is effective until federal determination of failure to comply with federal regulations)~~].

(29) Preceptor--An NFA certified by HHSC to provide supervision to an AIT.

[~~(30) Professional examination services (PES)--The testing agency that administers the NAB and state examinations to applicants seeking licensure as an NFA.~~]

(30) [~~(31)~~] Referral--A recommendation made by Long-term Care Regulation staff to investigate an NFA's compliance with licensure requirements when deficiencies or substandard quality of care

deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations §488.325.

(31) [~~(32)~~] Sanctions--An adverse licensure action against an NFA. In Texas, a sanction is one of the actions listed in §555.57 of this chapter (relating to Schedule of Sanctions).

(32) [~~(33)~~] Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(33) [~~(34)~~] State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas.

(34) [~~(35)~~] Substandard quality of care--For a Medicare- or Medicaid-certified facility, this term has the meaning given in Title 42 Code of Federal Regulations §488.301. For a licensed-only facility, this term has the meaning given in §554.101 of this title (relating to Definitions). [~~Texas Administrative Code, Title 26, Part 1, §554.101(139).~~]

(35) [~~(36)~~] THSC--Texas Health and Safety Code.

(36) [~~(37)~~] Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

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 August 28, 2023.

TRD-202303170
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 438-3161

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SUBCHAPTER B. REQUIREMENTS FOR LICENSURE

26 TAC §§555.11 - 555.13, 555.18

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The amendments give effect to Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §242.302.

§555.11. Application Requirements.

(a) Except as provided in subsections (b) and (c) of this section, an applicant seeking licensure must submit to the Texas Health and Human Services Commission (HHSC):

(1) a complete Nursing Facility Administrator's Application for Licensure form;

(2) the application fee;

(3) fingerprints for a Texas Department of Public Safety criminal background check;

(4) an official transcript reflecting a baccalaureate degree from a college or university accredited by an agency recognized by the Texas Higher Education Coordinating Board;

(5) if not a part of the transcript reflecting a baccalaureate degree, another transcript reflecting 12 [~~15~~] semester credit hours in long-term care administration, or its equivalent, that include the four [~~five~~] domains of the National Association of Long Term Care Administrator Boards; and

(6) proof of completing the minimum applicable internship that meets the internship requirements in §555.13 of this subchapter (relating to Internship Requirements).

(b) If an applicant has a health services executive (HSE) qualification and is applying for a license under §555.12(a)(5) [~~§555.12(a)(4)~~] of this subchapter (relating to Licensure Requirements), the applicant must submit:

(1) a complete Nursing Facility Administrator's Application for Licensure form;

(2) the application fee;

(3) proof of the HSE qualification;

(4) fingerprints for a Texas Department of Public Safety criminal background check; and

(5) certification [~~proof~~] that the applicant has not had a license revoked in any state.

(c) If an applicant has an NFA license issued by another state and is applying for a license under §555.12(a)(6) [~~§555.12(a)(5)~~] of this subchapter, the applicant must submit:

(1) a complete Reciprocity Licensure Questionnaire;

(2) the application fee;

(3) fingerprints for a Texas Department of Public Safety criminal background check; and

(4) proof of a license in good standing in another state.

(d) An application is valid for one year from the date the application fee is received.

(e) An applicant who does not meet the requirements for licensure within one year after HHSC receives the application must reapply for licensure as provided in this section.

(f) HHSC is not responsible for applications, forms, notices, and correspondence unless they are received by HHSC.

(g) HHSC is not responsible for mail it sends to a licensee or applicant if the licensee's or applicant's current address was not reported in writing to HHSC.

§555.12. Licensure Requirements.

(a) An applicant must meet one of the following groups of requirements to obtain a license as a nursing facility administrator (NFA).

(1) An applicant has a baccalaureate degree in any subject from a college or university accredited by an agency recognized by the Texas Higher Education Coordinating Board; and

(A) a minimum of 12 [~~15~~] semester credit hours in long-term care administration, or its equivalent, that includes courses in the four [~~five~~] domains of the National Association of Long Term Care Administrator Boards (NAB);

(B) completed a 1,000-hour internship that meets the requirements in §555.13 of this subchapter (relating to Internship Requirements); and

(C) passed the state and NAB examinations described in §555.18 of this subchapter (relating to Examinations and Requirements to Take the Examinations).

(2) An applicant has a baccalaureate degree in health administration, health services administration, health care administration, or nursing that includes coursework encompassing the four [~~five~~] domains of the NAB; and

(A) three years of management experience;

(B) completed a 500-hour internship that meets the requirements in §555.13 of this subchapter; and

(C) passed the state and NAB examinations described in §555.18 of this subchapter.

(3) An applicant has a baccalaureate degree with coursework in the four domains of NAB and one year of experience as assistant administrator of record or administrator of record in another state; and

(A) completed a 500-hour internship that meets the requirements in §555.13 of this subchapter; and

(B) passed the state and NAB examinations described in §555.18 of this subchapter.

(4) [~~(3)~~] An applicant has a master's degree in health administration, health services administration, health care administration, or nursing that includes coursework encompassing the four [~~five~~] domains of the NAB; and

(A) one year of management experience;

(B) completed a 500-hour internship that meets the requirements in §555.13; and

(C) passed the state and NAB examinations described in §555.18 of this subchapter.

(5) [~~(4)~~] An applicant has a health services executive qualification; and

(A) has not had a license revoked in any state; and

(B) passed the state examination described in §555.18 of this subchapter.

(6) [~~(5)~~] An applicant has a license issued by a state other than Texas and meets the requirements for licensure in paragraphs (1), (2), (3), or (4) [~~(1), (2), or (3)~~] of this subsection.

(b) HHSC accepts foreign university degrees and coursework that is counted as transfer credit by accredited universities recognized by the American Association of Collegiate Registrars and Admissions officers.

§555.13. Internship Requirements.

(a) Except as provided in subsection (b) or (c) of this section, an applicant must complete an internship that meets the following requirements.

(1) Before an applicant starts the internship, the applicant and the applicant's preceptor must complete a Texas Health and Human Services (HHSC) internship application.

(2) The internship must be in a nursing facility [~~that has a minimum of 60 beds, unless HHSC grants an exception to the minimum bed requirement. HHSC may consider an exception to the 60-bed requirement on a case-by-case basis. To be considered, the facility with fewer than 60 beds must be located in a rural area and more than 50 miles away from a 60-bed facility. An applicant must submit to HHSC a written request to complete an internship in a facility with fewer than 60 beds. HHSC will notify the applicant of the status of the applicant's request~~].

(3) A minimum of half of the internship hours must be during traditional business hours.

(4) The administrator-in-training (AIT) can train no more than 40 hours a week.

(5) If the internship is completed with a nursing facility administrator (NFA) not associated with a university as the preceptor, the AIT must complete a preceptor performance report. Additionally, the preceptor must complete an AIT final report.

(6) An AIT must complete an HHSC course in Infection Control and Personal Protective Equipment.

(7) [~~(6)~~] If the internship is completed with an NFA associated with a university accredited by an agency recognized by the Texas Higher Education Coordinating Board as the preceptor, the AIT must submit an official transcript to HHSC.

(8) The internship must be completed at the same facility at which the AIT's preceptor serves as NFA.

(b) HHSC may accept an internship completed in another state if:

(1) the internship is part of a National Association of Long Term Care Administrator Boards-accredited program; or

(2) the internship is approved by the other state and a minimum of 1,000 hours or a minimum of 500 hours if the requirements listed in §555.12(a)(2), (3), or (4) [~~§555.12(a)(2) or (3)~~] of this subchapter (relating to Licensure Requirements) are met. An applicant who has completed fewer than 1,000 hours of internship in another state that does not qualify for a 500-hour internship must [~~may~~] complete the remaining hours under a preceptor.

(c) As a substitute to meeting the internship requirements described in subsection (a) or (b) of this section, an applicant may submit to HHSC proof of a health services executive (HSE) qualification and certify that the applicant has not had a license or HSE qualification revoked in any state.

(d) The AIT must submit proof of completion of the internship or completion of HSE. HHSC will review the proof of completion and notify the applicant of the status of the applicant's request.

§555.18. Examinations and Requirements to Take the Examinations.

(a) Except as provided in subsection (b) of this section, an applicant seeking a license as a nursing facility administrator (NFA) from the Texas Health and Human Services Commission (HHSC) must pass the following examinations:

(1) the state examination on nursing facility requirements in Texas; and

(2) the NAB examinations.

(b) An applicant who meets the academic and internship requirements by presenting evidence of a health services executive (HSE) qualification must pass the state examination.

(c) An applicant registers for examination at the designated NAB website by:

(1) submitting an application for approval to take the examination; and

(2) paying the applicable state examination and NAB examination fees online [~~on-line~~].

(d) HHSC sends an e-mail notifying an applicant of the applicant's eligibility to take the examinations.

(e) An applicant must not take any examination without HHSC approval.

(f) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(g) An applicant completes the online [~~on-line~~] state and NAB examinations [~~at professional examination services~~].

(h) HHSC notifies an applicant of examination scores after receiving examination results.

(i) An applicant who fails an examination and wants to retake it must pay the appropriate state or NAB examination fee for each exam.

(j) An applicant who fails the state or NAB examination three consecutive times must complete an additional 1,000-hour administrator-in-training internship before retaking the examination.

(k) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license or who voluntarily surrendered the license must retake the state examination to obtain a new license.

(l) An applicant previously licensed as an NFA and whose license expired 365 or more days before the applicant reapplies for a license, or who voluntarily surrendered the license, must retake the NAB examination to obtain a new license if more than five years have passed since the applicant passed the NAB examination.

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

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SUBCHAPTER C. LICENSES

26 TAC §555.32, §555.35

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code §242.302, which grants HHSC the general authority to establish rules consistent with that subchapter, and directs HHSC to establish qualifications of applicants for licenses and renewal of licenses issued under that subchapter, as well as reasonable and necessary administration and implementation fees, and continuing education hours required to renew a license under that subchapter.

The amendments give effect to Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code §242.302.

§555.32. Provisional License.

(a) The Texas Health and Human Services Commission (HHSC) issues a provisional license to an applicant currently licensed or registered as a nursing facility administrator (NFA) in another state who submits the following to HHSC:

(1) complete and notarized Provisional Licensure Questionnaire and Nursing Facility Administrator License Application forms;

(2) the application fee;

(3) the provisional license fee; and

(4) proof of the following:

(A) a license and good standing status in another state [~~with licensing requirements substantially equivalent to the Texas licensure requirements~~];

(B) employment for at least one year as an administrator of record of a nursing facility in applicant's state;

(C) a passing score on the National Association of Long Term Care Administrator Boards examination and the state examination; and

(D) sponsorship by an NFA licensed by HHSC and who is in good standing, unless HHSC waives sponsorship based on a demonstrated hardship.

(b) A provisional license expires 180 days from the date of issue.

(c) HHSC issues an initial license certificate to a provisional license holder who satisfies the requirements for a license in §555.12 of this chapter (relating to Licensure Requirements) and §555.31 of this subchapter (relating to Initial license).

(d) HHSC may determine that a criminal conviction or sanction taken in another state is a basis for pending or denying a provisional license.

(e) If the internship hours completed in another state do not meet the requirements in §555.13 of this chapter (relating to Internship Requirements), then a provisional licensee must complete the required internship hours under the supervision of an HHSC-certified preceptor as described in §555.12 of this chapter.

§555.35. Continuing Education Requirements for License Renewal.

(a) The 40 hours of continuing education required for license renewal must:

(1) be completed during the previous two-year licensure period;

(2) include one or more of the four [~~five~~] domains of the National Association of Long Term Care Administrator Boards (NAB);

(3) include a Texas Health and Human Services Commission (HHSC) course in Infection Control and personal protective equipment;

(4) include at least six hours of continuing education in ethics; and

(5) be:

(A) approved by the National Continuing Education Review Service;

(B) a HHSC-sponsored event; or

(C) an upper-division semester credit course taken or taught at a post-secondary institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

(b) HHSC accepts NAB-approved self-study courses toward the required 40 hours of continuing education.

(c) HHSC waives, at a maximum, 20 of the 40 hours of continuing education required of a licensee who completes one three-semester-hour [~~three-semester hour~~] upper-division course taken at a post-secondary institution of higher education.

(d) HHSC approves continuing education credit hours for the same course, seminar, workshop, or program only once per license renewal period.

(e) HHSC may perform an audit of continuing education courses, seminars, or workshops that the licensee has reported by requesting certificates of attendance.

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

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes repeal of §749.2472, amendment to §749.2533; and new §§749.4401, 749.4411, 749.4413, 749.4415, 749.4417, 749.4419, 749.4421, 749.4423, 749.4425, 749.4427, 749.4429, 739.4431, 749.4433, 749.4451, 749.4453, 749.4455 in Title 26, Texas Administrative Code, Chapter 749, Minimum Standards for Child-Placing Agencies.

BACKGROUND AND PURPOSE

The rule changes implement Senate Bill 1896, 87th Legislature, Regular Session, 2021, as it relates to SECTION 21 of the bill.

SECTION 21 amended Texas Human Resources Code (HRC) to add §42.0538, which requires HHSC Child Care Regulation (CCR) to establish standards to allow a Child-Placing Agency (CPA) to issue a provisional foster home verification to a kinship provider who meets basic health and safety requirements identified in CCR rules. This statute cross-references Texas Family Code §264.851 for the definition of "kinship provider." This statute also requires CCR to establish the timeframe by which a foster home with a provisional kinship verification must meet all the requirements for a non-expiring verification. Accordingly, CCR is proposing rules that specify the requirements associated with the provisional verification of a kinship foster home.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §749.2472 deletes the rule as no longer necessary because the content of the rule has been modified and moved to proposed new §749.4455.

The proposed amendment to §749.2533(1) updates the rule title and content to clarify that there are two scenarios in which a CPA may issue a provisional verification; (2) formats the rule into an introduction with two subdivisions; and (3) puts the new requirements for a kinship provider in subdivision (2). The requirements for a kinship provider (A) establish that a CPA may issue a provisional verification to a kinship provider in specific circumstances, and (B) clarify that rules for provisional kinship foster home verifications are located in proposed new Subchapter W, Division 2, Provisional Kinship Foster Home Verification, of this chapter.

Proposed new Subchapter W, Kinship Foster Homes, adds a new subchapter in Chapter 749 for rules related to kinship foster homes.

Proposed new Division 1, Definitions, in proposed new Subchapter W, contains definitions for words and terms used in Subchapter W.

Proposed new §749.4401 provides terms and definitions that are used throughout the subchapter. The rule (1) includes the terms "affinity" and "consanguinity," which are identical to the definitions found in Chapter 745, Licensing, Subchapter A §745.21; and (2) adds definitions for "kinship foster child," "kinship foster home," "kinship foster parent," and "provisional kinship foster home verification".

Proposed new Division 2, Provisional Kinship Foster Home Verification, in proposed new Subchapter W, contains rules relating the requirements for a provisional kinship foster home verification.

Proposed new §749.4411 establishes that a CPA must comply with rules in new proposed Subchapter W, Kinship Foster Homes, Division 2, Provisional Kinship Foster Home Verification (1) before issuing a provisional kinship foster home verification; and (2) while a provisional kinship foster home verification is in effect.

Proposed new §749.4413 requires a CPA to comply with all other rules in Chapter 749, Minimum Standards for Child-Placing Agencies, unless (1) the CPA waives a requirement as provided by a rule in proposed new Division 2, Provisional Kinship Foster Home Verification; or (2) a rule in Division 2, Provisional Kinship Foster Home Verification, replaces another rule in Chapter 749.

Proposed new §749.4415 establishes which orientation training requirements a CPA may waive for a provisional kinship foster home while a provisional kinship foster home verification is in effect. The rule allows a CPA to waive the orientation topic in §749.831(a)(3), which requires a prospective foster parent to receive training on the needs and characteristics of children in the home.

Proposed new §749.4417 establishes when a prospective kinship foster parent is exempt from pre-service experience requirements. The rule (1) exempts a prospective kinship foster parent from completing pre-service experience in §749.861(b) of Chapter 749 if the kinship foster child was living in the home when the prospective kinship foster home applied with the CPA; and (2) if a prospective foster parent does not meet the pre-service exemption criteria in proposed new §749.4417(a) and must complete pre-service experience, allows a CPA to limit the prescribed regime of child-care experience in §749.861(b) to observations and interactions with the kinship foster child in the prospective kinship foster parent's home or the child's current placement.

Proposed new §749.4419 establishes the timeframes within which a caregiver in a provisional kinship foster home must complete the pre-service training requirements required by §749.863. The rule requires a caregiver to complete (1) general pre-service training required in (a)(1) in Figure: 26 TAC §749.863(a) before the CPA issues a non-expiring foster home verification unless the CPA waives the requirement according to §749.868, which is a waiver option available to all foster homes; (2) normalcy training required in (a)(2) in Figure: 26 TAC §749.863(a) before the CPA issues a non-expiring foster home verification unless the agency waives the requirement according to §749.868, which is a waiver option available to all foster homes; (3) emergency behavior intervention (EBI) training required under (a)(3) in Figure: 26 TAC §749.863(a) before the CPA issues a non-expiring foster home verification if the CPA does not allow for the use of EBI unless (A) the caregiver is exempt because the caregiver cares exclusively for children receiving treatment services for primary medical needs, or (B) the CPA waives the training requirement according to §749.868; (4) EBI training according to the timeframes in (a)(4)(C) in Figure: 26 TAC §749.863(a) if the CPA allows for use of EBI unless (A) the caregiver is exempt because the caregiver cares exclusively for children receiving primary medical needs, or (B) the CPA waives the requirement according to §749.868, which is a waiver option available to all foster homes; (5) safe sleeping training required in (a)(5) in Figure: 26 TAC §749.863(a) according to timeframes in (a)(5)(C) in Figure: 26 TAC §749.863(a) if the kinship foster home will care for children younger than two years of age, which is consistent with the requirement for all foster homes; and (6) administration of psychotropic medication training required in (a)(3) in Figure: 26 TAC §749.863(a) before the caregiver administers psychotropic medication, which is consistent with the requirements for all foster homes.

Proposed new §749.4421 outlines the foster home screening requirements a CPA must complete before issuing a provisional kinship foster home verification. The rule requires a CPA to (1) meet the home screening requirements in Subchapter M, Foster Home: Screenings and Verifications, Division 2, Foster Home Screenings if the kinship foster child was not living in the home of the prospective kinship foster home on the date the kinship foster parent applied with the CPA; or (2) request a copy of the kinship home assessment completed by the Texas Department of Family and Protective Services (DFPS) or Single Source Continuum Contractor (SSCC) within 30 days after the date the home applied with the agency if the kinship foster child was living in the kinship foster home on the date the prospective kinship foster home applied with the CPA. The rule provides specific actions a CPA must complete before issuing a provisional foster home verification, depending on whether DFPS or SSCC provides the CPA with a kinship home assessment. The rule also provides that CPA management staff must review and approve the home screening or home screening addendum.

Proposed new §749.4423 outlines the information a CPA must obtain and document from a DFPS kinship development worker or SSCC equivalent for a foster home screening or an addendum to the kinship home assessment for a provisional kinship foster home verification. The rule requires the CPA to (1) gather and document, if a kinship development worker or SSCC equivalent is assigned to the home, if applicable, (A) any identified concerns impacting the health or safety of children and the steps taken to mitigate the concerns, (B) kinship home assessment evaluations completed for caregivers in the home, and (C) kinship development plans (KDP) put in place, the reason for the plan, and the outcome of the plan; and (2) create and document the CPA's plan to address and mitigate any concerns identified in the KDP. If the CPA is unable to obtain this information, the rule requires the CPA to (1) document diligent efforts to contact the DFPS kinship development worker or SSCC equivalent if the attempts to contact the DFPS kinship development worker or SSCC equivalent are unsuccessful; or (2) document if there is not a DFPS kinship development worker or SSCC equivalent assigned to the home.

Proposed new §749.4425 outlines the foster home verification requirements a CPA must meet before issuing a provisional kinship foster home verification. The rule (1) only allows a CPA to issue a provisional kinship foster home verification to a kinship foster home that provides, or will provide, care to kinship foster children in the conservatorship of DFPS; (2) allows a CPA to issue the provisional kinship foster home verification after the CPA (A) completes requirements in §749.2470(a)(3) - (6) and proposed new §749.4421, (B) complies with requirements in proposed new §749.4423, (C) documents and addresses with the kinship foster family any indicators of potential risk to children based on (i) the background information the CPA receives from the DFPS kinship development worker or SSCC equivalent and (ii) any screening and evaluation information the CPA has conducted; (D) the CPA's child placement management staff reviews and approves the provisional kinship foster home verification by dating and signing it; and (E) issues a verification certificate that includes the (i) total capacity of the kinship foster home, including any adopted children of the caregivers who live in the kinship foster home and any children for whom the family provides day care, (ii) kinship foster home's foster care capacity, (iii) names and ages of the kinship foster children for which the kinship foster home is verified to provide foster care, (iv) types of services the kinship home will provide, (v) CPA's main office or branch office issuing the provisional kinship foster home verification, and (vi) expiration date of the provisional kinship foster home verification. The rule also clarifies that a CPA may issue a provisional kinship foster home verification before kinship foster parents complete pre-service training in accordance with proposed new §749.4419.

Proposed new §749.4427 establishes the length of time for which a CPA may issue a provisional kinship foster home verification as a maximum six months from the date it is issued. The rule also (1) states that a provisional kinship foster home verification may not be renewed; and (2) clarifies that a provisional

kinship foster home verification expires when a CPA issues a non-expiring foster home verification or closes the home.

Proposed new §749.4429 outlines the requirements a CPA must follow if a provisional kinship foster home will not meet the requirements for a non-expiring foster home verification before the provisional kinship foster home verification expires. The rule requires the CPA to (1) notify the parent as soon as the agency becomes aware that the home will not meet the requirements for a non-expiring verification; (2) close the kinship foster home by the date the provisional kinship foster home verification expires; and (3) complete a home closure summary as required by §749.2497.

Proposed new §739.4431 outlines the types of placements a CPA can make in a kinship foster home with a provisional kinship foster home verification. The rule (1) limits placements to kinship children; and (2) requires that if a CPA places additional kinship foster children in the kinship foster home while a provisional kinship foster home verification is in effect, the CPA must, by the date the agency places additional kinship children in the home, (A) determine and document in the home's record that the home is capable of providing care for the additional kinship foster children in accordance with rules in Chapter 749, (B) update the kinship foster home's provisional verification certificate to comply with requirements in §749.4425(b)(6), and (C) notify CCR of the change in verification as required by §749.2489. The rule also requires a CPA to, within 30 days after placing a kinship foster child in the home, (1) review and update with an addendum, if necessary, the foster home screening or the addendum to the kinship foster home assessment that was completed in accordance with §749.4421; and (2) ensure the kinship foster home meets all applicable requirements in Chapter 749. The rule further clarifies that placement of an additional kinship foster child in a kinship foster home with a provisional kinship foster home verification does not change the expiration date of the provisional verification.

Proposed new §749.4433 prohibits a CPA from using a kinship foster home with a provisional kinship foster home verification for respite care.

Proposed new Division 3, Non-Expiring Kinship Foster Home Verification, in proposed new Subchapter W, contains rules relating to requirements for issuing a non-expiring foster home verification to a kinship foster home.

Proposed new §749.4451 clarifies that a CPA may issue a kinship foster home a non-expiring foster home verification without having first issued a provisional kinship foster home verification.

Proposed new §749.4453 outlines the steps a CPA must take before issuing a non-expiring foster home verification to a kinship foster home with a provisional foster home verification. The rule requires a CPA to (1) ensure each caregiver is in compliance with all orientation, pre-service experience, and pre-service training requirements in Subchapter F; (2) meet all foster home verification requirements in §749.2470; and (3) notify CCR of the change in verification, as required in §749.2489.

Proposed new §749.4455 incorporates the content of proposed repealed §749.2472, relating to the requirement for a CPA to obtain a copy of the kinship home assessment completed by DFPS or SSCC, with updates to wording to clarify the rule applies if the CPA did not first issue a provisional kinship foster home verification.

FISCAL NOTE

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will repeal and expand existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

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

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

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

PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect the public benefit will be (1) greater flexibility for a CPA to verify a kinship foster home so that the CPA can provide the kinship foster home and children with additional support as the home works towards becoming fully verified; and (2) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there is no cost to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

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

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

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R116" in the subject line.

SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS
DIVISION 3. VERIFICATION OF FOSTER HOME

26 TAC §749.2472

STATUTORY AUTHORITY

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

The repeal affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§749.2472. Are there any additional requirements to verify a foster home that is currently acting as a kinship home with the Child Protective Services (CPS) Division of the Department?

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

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DIVISION 4. TEMPORARY, TIME-LIMITED, AND PROVISIONAL VERIFICATIONS

26 TAC §749.2533

STATUTORY AUTHORITY

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

The amendment affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§749.2533. When may I issue [~~What is the purpose of~~] a provisional verification?

You may issue a provisional verification to:

(1) Allow [~~The purpose of a provisional verification is to permit~~] continued care of foster children in a foster home that is transferring from one child-placing agency to another, whether in the current residence or a new residence; or[~~.~~]

(2) Allow a kinship provider to care for a kinship foster child in a kinship foster home when the kinship provider meets basic health and safety needs identified in Subchapter W, Division 2 of this chapter (relating to Provisional Kinship Foster Home Verification).

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

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SUBCHAPTER W. KINSHIP FOSTER HOMES
DIVISION 1. DEFINITIONS

26 TAC §749.4401

STATUTORY AUTHORITY

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

The new rule affects Texas Government Code §531.0055 and Texas Human Resources Code §42.042.

§749.4401. What do certain words mean in this subchapter?

These terms have the following meanings in this subchapter:

(1) Affinity--Related by marriage, as set forth in Texas Government Code §573.024 (relating to Determination of Affinity).

(2) Consanguinity--Two individuals are related to each other by consanguinity if one is a descendant of the other, or they share

a common ancestor. An adopted child is related by consanguinity for this purpose. Consanguinity is defined in Texas Government Code §573.022 (relating to Determination of Consanguinity).

(3) Kinship foster child--A child in the care of a kinship foster home who:

(A) Is related to the kinship foster parents by consanguinity or affinity; or

(B) Has a longstanding and significant relationship with the kinship foster parent before living in the kinship foster home.

(4) Kinship foster home--A foster family home that has a kinship foster parent or parents.

(5) Kinship foster parent--A foster parent who:

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

(B) Has a longstanding and significant relationship with the foster child before the child is placed in the kinship foster home; or

(C) Is the spouse of a foster parent who has a longstanding and significant relationship with the foster child before the child is placed in the kinship foster home.

(6) Provisional kinship foster home verification--A temporary foster home verification for a kinship foster home. A kinship foster home must meet certain requirements for a non-expiring foster home verification, as provided in this subchapter.

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

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DIVISION 2. PROVISIONAL KINSHIP FOSTER HOME VERIFICATION

26 TAC §§749.4411, 749.4413, 749.4415, 749.4417, 749.4419, 749.4421, 749.4423, 749.4425, 749.4427, 749.4429, 749.4431, 749.4433

STATUTORY AUTHORITY

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

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

§749.4411. When must I comply with the rules in this division?

You must comply with the rules in this division before issuing a provisional kinship foster home verification and while a provisional kinship foster home verification is in effect.

§749.4413. In addition to rules in this division, what other rules in this chapter must I comply with while a provisional kinship foster home verification is in effect?

You must comply with all other rules in this chapter while a provisional kinship foster home verification is in effect, unless:

(1) You waive a requirement, as provided by in this division; or

(2) A rule in this division replaces another rule in this chapter.

§749.4415. Which orientation requirements may I waive for a kinship foster parent while a provisional kinship foster home verification is in effect?

You may waive the orientation requirement in §749.831(a)(3) of this chapter (relating to What is the orientation requirement for caregivers and employees?).

§749.4417. When is a prospective kinship foster parent exempt from pre-service experience requirements?

(a) A prospective kinship foster parent caring for a child who will receive treatment services is not required to meet the pre-service requirements in §749.861(b) of this chapter (relating to What are the pre-service experience requirements for caregivers?) if the kinship foster child was living in the home on the date the prospective kinship foster home applied to your agency.

(b) If the prospective kinship foster parent does not meet the exemption criteria in subsection (a) of this section, you may limit the regimen of specific child-care experience you prescribe in accordance with §749.861(b) to observations and interactions with the kinship foster child in the prospective kinship foster parent's residence or the child's current placement.

§749.4419. When must a caregiver in a provisional kinship foster home complete pre-service training?

If you issue a provisional kinship foster home verification, a caregiver must complete pre-service training required by §749.863 of this chapter (relating to What are the pre-service training requirements for a caregiver?) as provided in this chart:
Figure: 26 TAC §749.4419

§749.4421. What are the foster home screening requirements for a provisional kinship foster home verification?

(a) If a kinship foster child was not living in the prospective kinship foster home on the date the prospective kinship foster parent applied with your agency, you must meet the home screening requirements in Subchapter M, Division 2 of this chapter (relating to Foster Home Screenings).

(b) If a kinship foster child was living in the prospective kinship foster home at the time the home applied with your agency, you must:

(1) Request a copy of the kinship home assessment from the Texas Department of Family and Protective Services (DFPS) or Single Source Continuum Contractor (SSCC) within 30 days after the date the home applied with your agency; and

(2) Meet the requirements in the following chart:
Figure: 26 TAC §749.4421(b)(2)

(c) Your child placement management staff must review and approve the home screening or home screening addendum completed in accordance with this section.

§749.4423. What information must I obtain from a Texas Department of Family and Protective Services (DFPS) kinship development worker or Single Source Continuum Contractor (SSCC) equivalent and document in a foster home screening for a provisional kinship foster home verification?

(a) If a DFPS kinship development worker or SSCC equivalent has been assigned to the home, you must contact the worker to obtain and document the following information as part of the home screening or addendum to the kinship home assessment required by §749.4421 of this division (relating to What are the foster home screening requirements for a provisional kinship foster home verification?):

(1) Any identified concerns impacting the health or safety of children and steps taken to mitigate the concerns;

(2) Kinship home assessment evaluations completed for caregivers in the home, if applicable; and

(3) Kinship developmental plans (KDP) put in place, the reason for the plan, and the outcome of the plan, if applicable.

(b) If the DFPS kinship development worker or SSCC equivalent indicates the kinship foster home is subject to a KDP, you must create a plan outlining steps you will take to address and mitigate any concerns identified in the KDP. You must document the plan in the home screening or addendum to the kinship home assessment.

(c) If your attempts to contact the DFPS kinship development worker or SSCC equivalent are unsuccessful, you must document your diligent efforts to make contact as part of home screening or addendum to the kinship home assessment, including the dates and methods by which you attempted contact.

(d) If there is no kinship development worker or SSCC equivalent assigned to the home, you must document this information in the foster home screening or foster home addendum.

§749.4425. What requirements must I meet before I issue a provisional kinship foster home verification?

(a) You may only issue a provisional kinship foster home verification to a kinship foster home that provides, or will provide, care to kinship foster children in the conservatorship of the Texas Department of Family and Protective Services (DFPS).

(b) You may only issue a provisional kinship foster home verification after:

(1) You complete the requirements in §749.2470(a)(3) - (6) of this chapter (relating to What must I do to verify a foster family home?);

(2) You complete the requirements for §749.4421 of this division (relating to What are the foster home screening requirements for a provisional kinship foster home verification?);

(3) You comply with requirements in §749.4423 of this division (relating to What information must I obtain from a Texas Department of Family and Protective Services (DFPS) kinship development worker or Single Source Continuum Contractor (SSCC) equivalent before I issue a provisional kinship foster home verification?);

(4) You document and address with the kinship foster family any indicators of potential risk to children based on:

(A) The background information you receive from the DFPS kinship development worker or SSCC equivalent as required by §749.4421 of this division and §749.4423 of this division, if applicable; and

(B) Any current screening and evaluation of information you have conducted;

(5) Your child placement management staff reviews and approves the provisional kinship verification by signing and dating it; and

(6) You issue a provisional kinship foster home verification certificate that includes:

(A) The total capacity of the kinship foster home, including the biological and adopted children of the caregivers who live in the kinship foster home, and any children for whom the family provides day care;

(B) The kinship foster home's foster care capacity, a subset of the total capacity, which includes only kinship foster children placed for foster care;

(C) The names and ages of kinship foster children for which the kinship foster home is verified to provide foster care;

(D) Types of services the kinship foster home will provide;

(E) The agency's main office or branch office that issued the verification; and

(F) The expiration date of the provisional kinship foster home verification.

(c) You can issue a provisional kinship foster home verification before the kinship foster parents complete pre-service training in accordance with §749.4419 of this division (relating to When must a caregiver in a provisional kinship foster home complete pre-service training?).

§749.4427. For what length of time may I issue a provisional kinship foster home verification?

(a) You may issue a provisional kinship foster home verification for six months from the date it is issued.

(b) You may not renew a provisional kinship foster home verification.

(c) A provisional kinship foster home verification is no longer valid when you issue a non-expiring foster home verification or close the home.

§749.4429. What must I do if a kinship foster home does not meet the requirements for a non-expiring verification before the provisional kinship foster home verification expires?

If a kinship foster home does not meet the requirements for a non-expiring foster home verification before the provisional kinship verification ends, you must:

(1) Notify the parent as soon as you become aware that the kinship foster home is not eligible for a non-expiring foster home verification and document the notification in the kinship foster home's file;

(2) Close the kinship foster home by the date the provisional kinship verification ends; and

(3) Complete a home closure summary that meets the requirements in §749.2497 of this chapter (relating to What requirements are there for a transfer or closing summary?).

§749.4431. What children may I place in a kinship foster home that has a provisional kinship foster home verification?

(a) You may only place kinship children in a kinship foster home that has a provisional kinship foster home verification.

(b) If you place additional kinship children in a home after you issue a provisional kinship foster home verification, you must:

(1) Do the following by the date you place the additional kinship foster children in the home:

(A) Determine the home is capable of providing care for the additional kinship foster child in accordance with the rules in this chapter and document your determination in the home's record;

(B) Update the kinship foster home's provisional verification certificate to be in compliance with §749.4425(b)(6) of this division (relating to What requirements must I meet before I issue a provisional kinship foster home verification?); and

(C) Notify Child Care Regulation of the change in verification, as required in §749.2489 of this chapter (relating to What information must I submit to Licensing about a foster home's verification status?); and

(2) Do the following within 30 days after the date you place the additional kinship foster child in the home:

(A) Review and update with an addendum, if necessary, the foster home screening or the addendum to the kinship home assessment you completed in accordance with §749.4421 of this division (relating to What are the foster home screening requirements for a provisional kinship foster home verification?); and

(B) Ensure the kinship foster home meets all applicable requirements in this chapter.

(c) The placement of additional kinship foster children in the home does not change the expiration date of the provisional verification.

§749.4433. May I use a home with a provisional kinship foster home verification for respite care?

You may not use a home with a provisional kinship foster home verification for respite care.

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 August 22, 2023.

TRD-202303090
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 438-3269

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DIVISION 3. NON-EXPIRING KINSHIP FOSTER HOME VERIFICATION

26 TAC §§749.4451, 749.4453, 749.4455

STATUTORY AUTHORITY

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

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

§749.4451. Must I issue a provisional kinship foster home verification before issuing a non-expiring foster home verification?

You are not required to issue a provisional kinship foster home verification if the home meets the requirements for a non-expiring foster home verification.

§749.4453. What must I do to issue a non-expiring foster home verification to a kinship foster home with a provisional foster home verification?

Before you may issue a non-expiring foster home verification to a kinship foster home with a provisional kinship foster home verification, you must:

(1) Ensure each caregiver is in compliance with all orientation, pre-service experience, and pre-service training requirements in Subchapter F of this chapter (relating to Training and Professional Development);

(2) Meet all foster home verification requirements in §749.2470 of this chapter (relating to What must I do to verify a foster family home?); and

(3) Notify Child Care Regulation of the change in verification, as required in §749.2489 of this chapter (relating to What information must I submit to Licensing about a foster home's verification status?).

§749.4455. If I did not issue a provisional kinship foster home verification, what additional requirements must I meet before issuing a non-expiring verification to a kinship foster home?

Before you may issue a non-expiring foster home verification to a kinship foster home for which you did not issue a provisional kinship foster home verification, you must obtain and review the kinship home assessment that the Texas Department of Family and Protective Services or the Single Source Continuum Contractor completed.

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

Filed with the Office of the Secretary of State on August 22, 2023.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER C. VEHICLE INSPECTION STATION OPERATION

37 TAC §23.25

The Texas Department of Public Safety (the department) proposes an amendment to §23.25, concerning Vehicle Inspection

Fees. The proposed amendment implements Senate Bill 2102, 88th Leg., R.S. (2023), by adopting the initial three-year fee for inspection of rental passenger cars or light trucks meeting the requirements of §548.1025, Transportation Code.

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be the publication of the initial three-year fee for inspection of certain rental vehicles meeting the requirements of Texas Transportation Code, §548.1025.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the department to adopt rules to enforce Chapter 548; and Texas Transportation Code, §548.5035, which requires the department to establish the fee by rule as proposed, S.B. 2102, 88th Leg., R.S. (2023).

Texas Government Code, §411.004(3); Texas Transportation Code, §548.002 and §548.5035, are affected by this proposal.

§23.25. Vehicle Inspection Fees.

(a) The vehicle inspection fee is a charge for performing the vehicle inspection only[,] and may not exceed the amount set by Texas Transportation Code, Chapter 548 or this chapter.

(b) The vehicle inspection station may collect the station portion of the inspection fee at the time of the original inspection whether the vehicle is passed or rejected.

(c) Charges for additional services related to the repair, replacement, or adjustment of the required items of inspection must be expressly authorized, or approved by the customer, and must be separately listed on the bill from the statutorily mandated inspection fee.

(d) A vehicle inspection station or vehicle inspector may not advertise, charge, or attempt to charge a fee in a manner that could reasonably be expected to cause confusion or misunderstanding on the part of an owner or operator presenting a vehicle regarding the relationship between the statutorily mandated inspection fee and a fee for any other service or product offered by the vehicle inspection station.

(e) The initial three-year fee for inspection of certain rental vehicles meeting the requirements of Texas Transportation Code, §548.1025 shall be $22.08.

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

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D. Phillip Adkins
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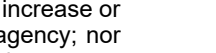

CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§35.5, 35.9, 35.13

The Texas Department of Public Safety (the department) proposes amendments to §§35.5, 35.9, and 35.13, concerning General Provisions. The changes to §35.5, concerning Standards of Conduct, clarify that the company license holder may not use the department's name in advertisements and specify its responsibilities relating to the conduct of its employees. The changes to §35.9, concerning Advertisements, exempt publishing the licensee's address in its advertisements when that address is a residence and clarify that business cards constitute advertisements. The changes to §35.13, concerning Drug-Free Workplace Policy, clarify that a sole proprietor must have a drug-free workplace policy.

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

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

Ms. Whittenton has determined that for each year of the first five-year period these rules are in effect the public benefit anticipated as a result of these rules will be greater clarity and consistency in the regulation of the private security industry.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.5. Standards of Conduct.

(a) The State Seal of Texas, a department seal or insignia, or the department's name or the name of a division within the department, may not be displayed as part of a uniform or identification card, as [~~or~~] markings on a motor vehicle, or in an advertisement or on a website, other than on such items prepared or issued by the department. The department's name may be used for the limited purpose of indicating the person or company is regulated by the department.

(b) All licensees, [~~and~~] company representatives, and employees shall cooperate fully with any investigation conducted by the department, including but not limited to the provision of employee records upon request by the department and compliance with any subpoena issued by the department. Commissioned security officers and personal protection officers shall cooperate fully with any request of the Medical Advisory Board made pursuant to Health and Safety Code, §12.095 relating to its determination of the officer's ability to exercise sound judgment with respect to the proper use and storage of a handgun. Violation of this subsection may result in the suspension of the license or commission for the duration of the noncompliance.

(c) An individual licensee issued a pocket card shall carry the pocket card on or about their person while on duty and shall present same to a peace officer or to a representative of the department upon request.

(d) A company license holder may not require a customer provide any documentation certifying that the customer has received a COVID-19 vaccination, or is in post-transmission recovery, to gain entry to the licensee's premises or to receive regulated services from the license holder.

(e) Company license holders are responsible for ensuring that employees or independent contractors who interact with customers or the general public provide personal identification, a company business card or other identification reflecting the company license holder's name, address, phone number, and license number, and DPS contact information.

(f) Company license holders are responsible for the conduct of their employees, regardless of whether the employee is licensed or unlicensed, is an independent contractor, or is performing a service for which no license is required. In particular, company license holders will be held responsible for fraud, misrepresentations or deceptive trade practices of their employees relating to sales or other customer interactions conducted on behalf of the company license holder.

§35.9. Advertisements.

(a) A licensee's advertisements must include:

(1) The company name and address as it appears in the records of the department unless the address is the license holder's residential address; and

(2) The company's license number.

(b) No licensee shall use the Texas state seal, [~~or~~] the name or insignia of the department, or the name or insignia of a division within the department to advertise or publicize a commercial undertaking, or otherwise violate Texas Business & Commerce Code, §17.08 or Texas Government Code, §411.017. The department's name may be used for the limited purpose of indicating the person or company is regulated by the department.

(c) The use of the department's name is prohibited when it may give a reasonable person the impression that the department issued the statement or that the individual is acting on behalf of the department.

(d) For purposes of this section, an advertisement includes any media created or used for the purpose of promoting the regulated business of the licensee, including business cards.

§35.13. Drug-Free Workplace Policy.

(a) In the interest of creating a safe and drug-free work environment for clients and employees, all licensed businesses [~~companies~~]

shall establish and implement a drug-free workplace policy consistent with the Texas Workforce Commission's "Drug-Free Workplace Policy."

(b) A copy of the business' [~~company's~~] drug-free workplace policy shall be signed by each employee and kept in each employee's file.

(c) For purposes of subsection (b) of this section, a sole proprietor who performs regulated services on behalf of the business is considered an employee of the business.

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER D. DISCIPLINARY ACTIONS

37 TAC §35.52

The Texas Department of Public Safety (the department) proposes an amendment to §35.52, concerning Administrative Penalties. The proposed amendment updates the administrative penalty schedule in §35.52(a) by adding penalties for a violation of proposed changes to §35.5, titled Standards of Conduct, concerning the company license holder's responsibilities relating to the conduct of its employees.

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.52. Administrative Penalties.

(a) The administrative penalties in this section are guidelines to be used in enforcement proceedings under the Act. The fines are to be construed as maximum penalties only, and are subject to application of the factors provided in Texas Government Code, §411.524.
Figure: 37 TAC §35.52(a)
[~~Figure: 37 TAC §35.52(a)~~]

(b) The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, will result in suspension of the license with no further notice or right to appeal. The suspension will take effect upon the passage of the deadline to appeal and will remain in effect until the penalty is paid in full.

(c) A license holder whose license is revoked for an administrative violation may reapply as a new applicant after the second anniversary of the date of the revocation. An application submitted prior to the second anniversary of the date of the revocation will be denied.

(d) A violation of this Chapter or the Act by a company representative as defined in §35.1 of this title (relating to Definitions) acting on behalf of a licensed company will be construed as a violation by the company.

(e) The violation of operating with an expired license applies to operation within the one year grace period to renew. The violation of operating without a license will apply to those operating after the one year grace period

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

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SUBCHAPTER F. COMMISSIONED SECURITY OFFICERS

37 TAC §35.81

The Texas Department of Public Safety (the department) proposes an amendment to §35.81, concerning Application for a Security Officer Commission. The proposed amendment implements House Bill 3424, 88th Leg., R.S. (2023), which requires applicants for a commissioned security officer license to undergo a psychological test to be eligible for the license.

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702; and Texas Occupations Code, §1702.163, which authorizes the commission to adopt a rule requiring an applicant for a security officer commission to complete a psychological test, H.B. 3424, 88th Leg., R.S. (2023).

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a) and §1702.163, are affected by this proposal.

§35.81. Application for a Security Officer Commission.

(a) A complete security officer commission application must be submitted on the most current version of the form provided by the department. The application must include:

(1) The required application fee;

(2) Fingerprints in form and manner approved by the department;

(3) The required criminal history check fee;

(4) A copy of the applicant's Level II certificate of completion;

(5) A copy of the applicant's Level III certificate of completion;

(6) Non Texas residents must provide a copy of an identification card issued by the state of the applicant's residence, or other government issued identification card; [~~and~~]

(7) Non United States citizens must submit a copy of their current alien registration card. Non-resident aliens must also submit documents establishing the right to possess firearms under federal law; and[~~.~~]

(8) Proof of completion of the Minnesota Multiphasic Personality Inventory on the department-prescribed form. The form must be signed by the administering psychologist or psychiatrist and must reflect the psychologist's or psychiatrist's interpretation of the results and the determination that the applicant is not disqualified from the license by reason of a mental health condition.

(b) Incomplete applications will not be processed and will be returned for clarification or missing information.

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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SUBCHAPTER G. PERSONAL PROTECTION OFFICERS

37 TAC §35.91

The Texas Department of Public Safety (the department) proposes an amendment to §35.91, concerning Requirements for Personal Protection License. The proposed amendment ensures consistency with the change proposed to §35.81, concerning Application for a Security Officer Commission, which implements House Bill 3424, 88th Leg., R.S. (2023).

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.91. Requirements for Personal Protection License.

(a) An applicant for a personal protection license shall:

(1) Submit a written application for a personal protection license on a form prescribed by the department;

(2) Be at least twenty-one (21) years of age;

(3) Either possess a valid security officer commission issued prior to applying for a personal protection license, or submit an application for security officer commission in conjunction with the application for a personal protection license;

(4) Submit proof that the applicant has successfully completed the personal protection officer course taught by an approved personal protection officer instructor; and

(5) Submit proof of completion of the Minnesota Multiphasic Personality Inventory [~~test or equivalent (proof of completion of the Minnesota Multiphasic Personality Inventory test shall be~~] on the department-prescribed [~~prescribed~~] form [~~Declaration of Psychological and Emotional Health and shall be signed by a licensed psychologist~~)]. The form must be signed by the administering psychologist or psychiatrist and must reflect the psychologist's or psychiatrist's interpretation of the results and the determination that the applicant is not disqualified from the license by reason of a mental health condition.

(b) A personal protection officer may transfer their license to another employer if the personal protection officer:

(1) Has transferred their security officer commission to the new employer; and

(2) Submits the appropriate form and transfer fee to the department within fourteen (14) days of the transfer of employment to the new employer.

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

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SUBCHAPTER J. SPECIAL COMPANY LICENSE QUALIFICATIONS

37 TAC §35.124

The Texas Department of Public Safety (the department) proposes new §35.124, concerning Alarm Company and Alarm Training School Licenses. The new rule specifies the experience required for alarm company and alarm training school license applicants.

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.124. Alarm Company and Alarm Training School Licenses.

Pursuant to the Act, the department has determined an applicant for licensure as an alarm company, alarm training school, or the prospective company representative of the applicant company must have two (2) consecutive years of alarm related experience, including installation, monitoring, sales, or related supervision.

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

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SUBCHAPTER L. TRAINING

37 TAC §35.143

The Texas Department of Public Safety (the department) proposes amendments to §35.143, concerning Training Instructor Approval. The proposed amendments provide an additional method to qualify as a firearm training instructor and removes the minimum number of training hours required, which is outdated and inconsistent with the certifications otherwise required.

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity and consistency in the regulation of the private security industry.

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

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.143. Training Instructor Approval.

(a) An application for approval as a training instructor shall contain evidence of qualification as required by the department. Instructors may be approved for classroom or firearm training, or both. An individual may apply for approval for one or both of these categories. To qualify for classroom or firearm instructor approval, the applicant must submit acceptable certificates of training for each category. [~~The classroom instructor and firearm certificates shall represent a combined minimum of forty (40) hours of department approved instruction.~~]

(b) The items detailed in this subsection may constitute proof of qualification as a classroom instructor for security officers:

(1) An instructor's certificate issued by Texas Commission on Law Enforcement (TCOLE);

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement agency approved by the department;

(3) An instructor's certificate issued by the Texas Education Agency (TEA);

(4) An instructor's certificate relating to law enforcement, private security, or industrial security issued by a junior college, college, or university; or

(5) A license to carry handgun instructor certificate issued by the department.

(c) The items listed in this subsection may constitute proof of qualification as a firearm training instructor, if reflecting training completed within two (2) years of the date of the application:

(1) A handgun instructor's certificate issued by the National Rifle Association;

(2) A firearm instructor's certificate issued by TCOLE; [~~or~~]

(3) A firearm instructor's certificate issued by a federal, state, or political subdivision law enforcement agency approved by the department; or[.]

(4) Documentation establishing that the applicant regularly instructs others in the use of handguns and has graduated from a handgun instructor school that uses a nationally accepted course designed to train persons as handgun instructors.

(d) Proof of qualification as an alarm systems training instructor shall include proof of completion of an approved training course on alarm installation.

(e) Proof of qualification as a personal protection officer instructor shall include, but not be limited to:

(1) A firearm instructor's certificate issued by TCOLE along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific date of classes taught.

(2) An instructor's certificate issued by federal, state, or political subdivision law enforcement academy along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(3) An instructor's certificate issued by TEA along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(4) An instructor's certificate relating to law enforcement, private security or industrial security issued by a junior college, college or university along with proof that the individual has instructed nonlethal self-defense or nonlethal defense of a third party for three (3) or more years. Evidence of instruction experience must include a one page detailed description of the training provided and the schedule or specific dates of classes taught.

(5) Evidence of successful completion of a department approved training course for personal protection officer instructors.

(f) Notice shall be given in writing to the department within fourteen (14) days after a change in address of the approved instructor.

(g) In addition to summary actions under the Act, based on criminal history disqualifiers, the department may revoke or suspend an instructor's approval or deny the application or renewal thereof upon evidence that:

(1) The instructor or applicant has violated any provisions of the Act or this chapter;

(2) The qualifying instructor's certificate has been revoked or suspended by the issuing agency;

(3) A material false statement was made in the application; or

(4) The instructor does not meet the qualifications set forth in the provisions of the Act and this chapter.

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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CHAPTER 36. METALS RECYCLING ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §36.1

The Texas Department of Public Safety (the department) proposes an amendment to §36.1, concerning Definitions. The proposed amendment removes the definition of "fixed location" relating to the regulation of metal recycling entities because the definition conflicts with the statutory definition adopted in Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956).

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity in regulation of the metal recycling industry and compliance with legislation.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.1. Definitions.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise:

(1) Act--Texas Occupations Code, Chapter 1956.

(2) Advisory letter--An informational notification of an alleged minor violation of statute or administrative rule for which no disciplinary action is proposed.

(3) Applicant--A person who has applied for registration under the Act.

(4) Business owner--A sole proprietor, partner, member, or other individual with a financial interest in the entity.

(5) Commission--The Public Safety Commission.

(6) Controlling interest--More than 50% ownership interest in the entity.

(7) Department--The Texas Department of Public Safety.

~~[(8) Fixed location--A building or structure for which a certificate of occupancy can be issued.]~~

(8) [~~(9)~~] Immediate family member--A parent, child, sibling, or spouse.

(9) [~~(10)~~] Military service member, military veteran, and military spouse--Have the meanings provided in Texas Occupations Code, §55.001.

(10) [~~(11)~~] On-site representative--An individual responsible for the day-to-day operation of the location.

(11) [~~(12)~~] Person--A corporation, organization, agency, business trust, estate, trust, partnership, association, holder of a certificate of registration, an individual, or any other legal entity.

(12) [~~(13)~~] Personal identification document--Has the meanings provided by Texas Occupations Code, §1956.001(8) of the Act.

(13) [~~(14)~~] Program--Texas Metals Program.

(14) [~~(15)~~] Registrant--A person who holds a certificate of registration under the Act.

(15) [~~(16)~~] Revocation--The withdrawal of authority to act as a metal recycling entity under the Act.

(16) [~~(17)~~] Statutory agent--The natural person to whom any legal notice may be delivered for each location.

(17) [~~(18)~~] Suspension--A temporary cessation of the authority to act as a metal recycling entity under the Act.

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

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D. Phillip Adkins
General Counsel
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37 TAC §36.5

The Texas Department of Public Safety (the department) proposes the repeal of §36.5, concerning Sellers of Catalytic Converters in the Ordinary Course of Business. The proposed repeal removes the department's clarification of the statutory exemption for businesses engaged in the sale of used catalytic converters in the ordinary course of business because the exempted entities are now expressly listed in statute pursuant to Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956).

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity in regulation of the metal recycling industry and compliance with legislation.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.5. Sellers of Catalytic Converters in the Ordinary Course of Business.

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

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D. Phillip Adkins
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SUBCHAPTER B. CERTIFICATE OF REGISTRATION

37 TAC §36.11

The Texas Department of Public Safety (the department) proposes amendments to §36.11, concerning Application for Certificate of Registration. The proposed amendments are required to conform with statutory changes enacted in Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956). S.B. 224 requires an applicant for a certificate of registration to provide the physical address of the fixed location at which it will conduct all or most of its regulated activity; it requires an applicant to submit a declaration describing the extent to which the applicant intends to engage in transactions involving catalytic converters removed from motor vehicles during the applicant's business activity; and it requires the updating of the declaration to reflect relevant changes to the licensee's activities. The proposed amendment also removes an unnecessary application requirement.

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity in regulation of the metal recycling industry and compliance with legislation.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956 and §1956.022, which authorizes the commission to adopt rules to establish qualifications for a metals recycling entity certificate of registration.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013 and §1956.022, are affected by this proposal.

§36.11. Application for Certificate of Registration.

(a) A certificate of registration may only be obtained through the department's online application process.

(b) The application for certificate of registration must include, but is not limited to:

(1) Criminal history disclosure of all convictions for the owner with a controlling interest in the business, or if no owner has a controlling interest in the business, for the entity's on-site representative;

(2) Proof of ownership and current status as required by the department, including but not limited to, a current Certificate of Existence or Certificate of Authority from the Texas Office of the Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts;

(3) All fees required pursuant to §36.17 of this title (relating to Fees);

~~[(4) A copy of any license or permit required by a county, municipality, or political subdivision of this state in order to act as a metal recycling entity in that county or municipality, issued to the applicant;]~~

(4) [~~(5)~~] Proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training); [~~and~~]

(5) [~~(6)~~] A statutory agent disclosure pursuant to §36.12 of this title (relating to Statutory Agent Disclosure);[~~.~~]

(6) The physical address of the fixed location at which the applicant will conduct regulated metal recycling activities; and

(7) If the applicant's business activity involves catalytic converters removed from motor vehicles, a declaration on the approved department form stating:

(A) whether the applicant will engage in a business activity that involves the conversion of catalytic converters removed from motor vehicles into raw material products by a method that in part requires the use of powered tools and equipment or the use of such raw material products in the manufacture of producer or consumer goods;

(B) whether the applicant will purchase or otherwise acquire catalytic converters removed from motor vehicles for the eventual use of the metal for purposes of the aforementioned business activities but will not actually engage in those activities; or

(C) that the applicant will deal only incidentally with catalytic converters removed from motor vehicles.

(c) Applicants proposing to conduct business at more than one (1) location must complete an application for each location and obtain a certificate of registration for each location. An applicant proposing

to conduct business at more than one (1) location is only required to comply with the requirement of subsection (b)(4) [~~subsection (b)(5)~~] of this section for the initial location at which the applicant is seeking to conduct business.

(d) A new certificate of registration for a metals recycling entity may not be issued if the applicant's immediate family member's registration as a metals recycling entity, at that same location, is currently suspended or revoked, or is subject to a pending administrative action, unless the applicant submits an affidavit stating the family member who is the subject of the suspension, revocation or pending action, has no, nor will have any, direct involvement or influence in the business of the metals recycling entity.

(e) A new certificate of registration may be issued at the same location where a previous owner's registration as a metals recycling entity is currently suspended, is subject to a pending administrative action, or was previously revoked, if the applicant submits an affidavit stating the previous owner who is the subject of the suspension, revocation, or other pending administrative action, will have no direct involvement or influence in the business of the metals recycling entity. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous registration holder is involved in the business of metals recycling entity at that location, the certificate of registration will be revoked pursuant to §36.53 of this title (relating to Revocation of a Certificate of Registration). In addition to the affidavit, when the change of ownership of the metals recycling entity is by lease of the location, the applicant seeking a certificate of registration must provide a copy of the lease agreement included with the application for certificate of registration.

(f) The failure of an applicant to meet any of the conditions of subsections (a) - (e) of this section will result in rejection of the application as incomplete.

(g) An applicant for a certificate of registration is not authorized to engage in any activity for which a certificate of registration is required prior to being issued a certificate of registration by the department.

(h) A metal recycling entity whose business activity substantially changes in the extent to which the entity engages in transactions involving catalytic converters removed from motor vehicles must update the entity's declaration at the time of or prior to the 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 October 25, 2023.

TRD-202303153
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 424-5848

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SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §36.60

The Texas Department of Public Safety (the department) proposes amendments to §36.60, concerning Administrative Penalties. The proposed amendments remove obsolete language and modify the penalty schedule to reflect violations of the proposed amendments to rules §36.11 and §36.36, and Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956).

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

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

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be greater clarity in regulation of the metal recycling industry and compliance with legislation.

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

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which

authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.60. Administrative Penalties.

~~[(a) In addition to or in lieu of discipline imposed pursuant to §36.52 of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration) the department may impose an administrative penalty on a person who violates this Chapter or Subchapter A-2 or Subchapter A-3 of the Act, or who engages in conduct that would constitute an offense under §1956.040(c-2) or (c-4) of the Act.]~~

(a) [~~(b)~~] The figure in this section reflects the department's penalty schedule applicable to administrative penalties imposed under this section. For any violation not expressly addressed in the penalty schedule, the department may impose a penalty not to exceed $500 for the first (1st) violation. For the second (2nd) violation within the preceding one (1) year period, the penalty may not exceed $1,000.
Figure: 37 TAC §36.60(a)
[~~Figure: 37 TAC §36.60(b)~~]

(b) [~~(c)~~] Upon receipt of a notice of administrative penalty under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearing; Settlement Conference).

(c) [~~(d)~~] The failure to pay an administrative penalty that has become final, whether by the passage of the deadline to appeal or by final court disposition, whichever is later, shall result in suspension of the license with no further notice or right to appeal. The suspension takes effect when the appeal deadline has passed and remains in effect until the penalty is paid in full.

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 August 25, 2023.

TRD-202303154
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 424-5848

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.54

The Texas Board of Criminal Justice (board) proposes new rule §151.54, Employee Training and Education - Tuition Reimbursement. The purpose of the new rule is to authorize reimbursement of training and education expenses consistent with Subchapters C and D, Chapter 656, Texas Government Code. The proposed rule has been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed rule will be in effect, enforcing or administering the proposed rule will not have foreseeable implications related to costs or revenues for state or local government because the proposed rule will be administered using existing staffing and processes.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed rule does not require compliance by any persons. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed rule, will be to provide TDCJ employees an opportunity to qualify for reimbursement of training and education expenses. No cost will be imposed on regulated persons.

The proposed rule will have no impact on government growth; no impact on local employment; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed rule will create a create a tuition reimbursement program consistent with Subchapters C and D, Chapter 656, Texas Government Code. The proposed rule will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and Subchapters C and D, Chapter 656, Texas Government Code, which authorize the board to adopt rules for the training and education of TDCJ administrators and employees.

Cross Reference to Statutes: None.

§151.54. Employee Training and Education - Tuition Reimbursement.

(a) Purpose. The purpose of this rule is to authorize reimbursement of training and education expenses consistent with Subchapters C and D, Chapter 656, Texas Government Code.

(b) The Texas Department of Criminal Justice (TDCJ) shall adopt policies related to training and education for agency administrators and employees consistent with this rule and Subchapters C and D, Chapter 656, Texas Government Code.

(c) The policies may establish additional eligibility criteria for administrator and employee participation in training and education supported by the TDCJ as well as an explanation of the administrators' and employees' responsibilities and potential liabilities as participants.

(d) A TDCJ administrator or employee must be employed on a full-time basis and approved by their respective division director to be eligible for training and education supported by the TDCJ.

(e) A TDCJ administrator or employee must follow all applicable TDCJ policies adopted pursuant to this rule.

(f) Only the TDCJ executive director may authorize the tuition reimbursement payment of a TDCJ administrator or employee for a training or education program offered by an institution of higher education or private or independent institution of higher education as de-

fined by Section 61.003, Education Code. The TDCJ may only reimburse the tuition expenses for a program course successfully completed by the administrator or employee at an institution of higher education accredited by a recognized accrediting agency as defined by Section 61.003, Education Code.

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

Filed with the Office of the Secretary of State on August 28, 2023.

TRD-202303178
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 8, 2023
For further information, please call: (936) 437-6700

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CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION
SUBCHAPTER A. MISSION AND ADMISSIONS

37 TAC §152.3

The Texas Board of Criminal Justice (board) proposes amendments to §152.3, concerning Admissions. The amendments are proposed in conjunction with a proposed rule review of §152.3 as published in another section of the *Texas Register.* The proposed amendments conform the rule to legislation from the 88th legislative session, HB 2620, relating to the confinement in a county jail of a person pending transfer to the Texas Department of Criminal Justice and to compensation to a county for certain costs of confinement. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments clarify that TDCJ shall accept inmates sentenced to prison within 45 days of the date commitment papers are certified, instead of sent, throughout the rule and establish procedures for that certification.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify that TDCCJ shall accept inmates sentenced to prison within 45 days of the date commitment papers are certified, instead of sent, throughout the rule and establish procedures for that certification. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to provide clarity for when TDCJ will accept inmates sentenced to prison. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; § 499.071, which requires the board to adopt a scheduled admissions policy, and § 507.024, which requires the board to adopt rules to provide for the safe transfer of defendants from counties to state jail felony facilities.

Cross Reference to Statutes: None.

§152.3. Admissions.

(a) Counties will send commitment papers on inmates [~~offenders~~] sentenced to the Texas Department of Criminal Justice (TDCJ) to the TDCJ Classification and Records Office (CRO) immediately following completion of the commitment papers. Those counties equipped to do so may send paperwork electronically.

(b) The TDCJ shall accept inmates [~~offenders~~] sentenced to prison within 45 days of the date the commitment papers are certified by the CRO [~~sent~~]. [~~If sent by mail, the 45 days shall begin on the postmarked date.~~]

(c) Not later than the fifth business day after the date the CRO receives commitment papers from the county, the CRO shall:

(1) review and certify the commitment papers if the CRO determines there are no errors or deficiencies requiring corrective action by the county; or

(2) notify the county that the CRO has determined the commitment papers require corrective action by the county.

(d) [~~(c)~~]Inmates [~~Offenders~~] shall be scheduled for admission based on:

(1) their length of confinement in relation to the 45 days from the date the commitment papers are certified [~~sent~~]; and

(2) transportation routes.

(e) [~~(d)~~] Counties will inform the TDCJ State Ready Office when inmates [~~offenders~~] for whom commitment papers have been sent are transferred to another facility by bench warrants.

(f) [~~(e)~~] The TDCJ shall notify counties via electronic transmission, such as facsimile or email when applicable, of inmates [~~offenders~~] scheduled for intake, the date of intake, the respective reception unit, and transportation arrangements. Inmates [~~Offenders~~] shall be sorted by name and State Identification (SID) number, as identified by the court judgment.

(g) [~~(f)~~] Counties will notify the TDCJ admissions coordinator of any inmates [~~offenders~~] who are not available for transfer and the reason they are not available for transfer.

(h) [~~(g)~~] Counties may identify inmates [~~offenders~~] with medical or security issues that may be scheduled for intake out of sequence

on a case-by-case basis by contacting the TDCJ admissions coordinator.

(i) [~~(h)~~] After the receipt of an order by a judge for admission of an inmate [~~offender~~] to a state jail, the placement determination shall be made by the TDCJ Admissions Office. Placement shall be made in the state jail designated as serving the county in which the inmate [~~offender~~] resides unless:

(1) the inmate [~~offender~~] has no residence or was a resident of another state at the time of committing an offense;

(2) alternative placement would protect the life or safety of any person;

(3) alternative placement would increase the likelihood of the inmate's [~~offender's~~] successful completion of confinement or supervision;

(4) alternative placement is necessary to efficiently use available state jail capacity, including alternative placement because of gender; or

(5) alternative placement is necessary to provide medical or psychiatric care to the inmate [~~offender~~].

(j) [~~(i)~~] If the inmate [~~offender~~] is described by subsection (i)(1) [~~(h)(1)~~] of this rule, placement shall be made in the state jail designated as serving the county in which the offense was committed, unless a circumstance in subsection (i)(2) - (5) [~~(h)(2)~~ - ~~(5)~~] of this rule applies.

(k) [~~(j)~~] The TDCJ Admissions Office shall attempt to have placement determinations made at a regional level that may include one or more regions as designated in 37 Texas Administrative Code §152.5 (relating to Designation of State Jail Regions).

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 August 28, 2023.

TRD-202303177
Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: October 8, 2023
For further information, please call: (936) 437-6700

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §§403.3, 403.5, 403.15

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 403, Criminal Convictions and Eligibility for Certifications, §403.3, Scope, §403.5, Access to Criminal History Record Information, and §403.15, Report of Convictions by an Individual or a Department.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to the rule is to reflect grammatical corrections and change "fire department" to a "regulated entity" which better reflects the Commission's regulatory authority.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

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

PUBLIC BENEFIT AND COST NOTE

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

LOCAL ECONOMY IMPACT STATEMENT

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

(7) the rules will not increase the number of individuals subject to the rule; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

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

ENVIRONMENTAL IMPACT STATEMENT

The commission 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.

REQUEST FOR PUBLIC COMMENT

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

STATUTORY AUTHORITY

The amended rules are proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rules are also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.036, which authorizes the commission to adopt rules establishing the requirements for certification.

CROSS-REFERENCE TO STATUTE

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

§403.3. Scope.

(a) The policy and procedures established in this chapter apply to a person who holds or applies for any certificate issued under the commission's regulatory authority contained in Government Code, Chapter 419.

(b) When a person is convicted of a crime of a sexual nature, the conviction of which would require the individual to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure; or

(c) When a person is convicted of a crime that is an offense under Title 7 of the Texas Penal Code, or a similar offense under the laws of the United States of America, another state, or another [~~other~~] jurisdiction, the person's conduct directly relates to the competency and reliability of the person to assume and discharge the responsibilities of fire protection personnel. Such conduct includes, but is not limited to, intentional or knowing conduct, without a legal privilege, which [~~that~~] causes or is intended to cause a fire or explosion with the intent to injure or kill any person or animal or to destroy or damage any property. The commission may:

(1) deny a person the opportunity to be examined for a certificate;

(2) deny the application for a certificate;

(3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;

(4) refuse to renew a certificate;

(5) suspend, revoke, or probate the suspension or revocation of an existing certificate; or

(6) limit the terms or practice of a certificate holder to areas prescribed by the commission.

(d) When a person's criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate issued by the commission, the commission may:

(1) deny a person the opportunity to be examined for a certificate;

(2) deny the application for a certificate;

(3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;

(4) refuse to renew a certificate;

(5) suspend, revoke, or probate the suspension or revocation of an existing certificate; or

(6) limit the terms or practice of a certificate holder to areas prescribed by the commission.

§403.5. Access to Criminal History Record Information.

(a) Criminal history record. The commission is entitled to obtain criminal history record information maintained by the Department of Public Safety, or another law enforcement agency to investigate the eligibility of a person applying to the commission for or holding a certificate.

(b) Confidentiality of information. All information received under this section is confidential and may not be released to any person outside the agency except in the following instances:

(1) a court order;

(2) with written consent of the person being investigated;

(3) in a criminal proceeding; or

(4) in a hearing conducted under the authority of the commission.

(c) Early review. A regulated entity [~~fire department~~] that employs a person regulated by the commission, a person seeking to apply for a beginning position with a regulated entity, a volunteer fire department, or an individual participating in the commission certification program may seek the early review under this chapter of the person's present fitness to be certified. Prior to completing the requirements for certification, the individual may request such a review in writing by following the required procedure. A decision by the commission based on an early review does not bind the commission if there is a change in circumstances. The following pertains to early reviews:

(1) The commission will complete its review and notify the requestor in writing concerning potential eligibility or ineligibility within 90 days following receipt of all required and necessary information for the review.

(2) A notification by the commission regarding the results of an early review is not a guarantee of certification, admission to any training program, or employment with a local government.

(3) A fee assessed by the commission for conducting an early review will be in an amount sufficient to cover the cost of conducting [~~to conduct~~] the review process, as provided in §437.19 of this title (relating to Early Review Fees).

(4) An early review request will be considered incomplete until the requestor submits all required and necessary information. Early review requests that remain incomplete for 90 days following

receipt of the initial request will expire. If the request expires and an early review is still desired, a new request and fee must be submitted.

§403.15. Report of Convictions by an Individual or a Department.

(a) A certificate holder must report to the commission, any conviction, other than a minor traffic offense (Class C misdemeanor) under the laws of this state, another state, the United States, or a foreign country, within 14 days of the conviction date.

(b) A regulated entity [~~fire~~ ~~department~~] or local government entity shall report to the commission, any conviction of a certificate holder other than a minor traffic offense (class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, that it has knowledge of, within 14 days of the conviction date.

(c) A certificate holder is subject to suspension, revocation, or denial of any or all certifications for violation of the requirements of subsection (a) of this section. Each day may be considered a separate offense.

(d) A regulated entity [~~fire~~ ~~department~~] or government entity regulated by the commission violating subsection (b) of this section may be subject to administrative penalties of up to $500. Each day may be considered a separate offense.

(e) Notification may be made by mail, e-mail, or in-person [~~in person~~] to the Texas Commission on Fire Protection (TCFP) Austin office. TCFP Form #014 shall be used.

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 August 24, 2023.

TRD-202303142
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 936-3841

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CHAPTER 439. EXAMINATOINS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.19

The Texas Commission on Fire Protection (commission) proposes amendments to 37 Texas Administrative Code Chapter 439, Examinations for Certifications, §439.19, Number of Test Questions.

BACKGROUND AND PURPOSE

The purpose of the proposed amendments to the rule is to reflect changes to the number of test questions, number of pilot questions, and allotted time for testing for each of the certification testing sections.

FISCAL NOTE IMPACT ON STATE AND LOCAL GOVERNMENT

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

PUBLIC BENEFIT AND COST NOTE

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

LOCAL ECONOMY IMPACT STATEMENT

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

(2) the rules will not create or eliminate any existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriation;

(4) the rules will not result in a decrease in fees paid to the agency;

(5) the rules will not create a new regulation;

(6) the rules will not expand a regulation;

(7) the rules will not increase the number of individuals subject to the rule; and

(8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

COSTS TO REGULATED PERSONS

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

ENVIRONMENTAL IMPACT STATEMENT

The commission 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.

REQUEST FOR PUBLIC COMMENT

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

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also proposed under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.036, which authorizes the commission to adopt rules establishing the requirements for certification.

CROSS-REFERENCE TO STATUTE

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

§439.19. Number of Test Questions.

(a) Each examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly. The maximum possible number of pilot questions will be 10% of the number of exam questions, rounded up.

(b) The number of questions on an examination, sectional examination, or retest will be based upon the specific examination, or number of recommended hours for a particular curriculum or section as shown in the table below. Any pilot questions added to an examination, sectional examination, or retest will be in addition to the number of exam questions.

Figure: 37 TAC §439.19(b)

[~~Figure: 37 TAC §439.19(b)~~]

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

Filed with the Office of the Secretary of State on August 23, 2023.

TRD-202303124
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 936-3841

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TITLE 43. TRANSPORTATION

PART 3. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

CHAPTER 57. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

43 TAC §57.48

INTRODUCTION. The Motor Vehicle Crime Prevention Authority (MVCPA) proposes amendments to 43 Texas Administrative Code (TAC) §57.48 concerning motor vehicle years of insurance calculations. These amendments are necessary to implement Senate Bill (SB) 224 enacted during the 88th Legislature, Regular Session (2023). SB 224 provides that the (a)(1) single statutory fee payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals is increased from $4 to $5; and (a)(4) all motor vehicle or automobile insurance policies as defined by Insurance Code §5.01(e), covering a motor vehicle shall be assessed the $5 fee except mechanical breakdown policies, garage liability policies, non-resident policies, and policies providing only non-ownership or hired auto coverages.

EXPLANATION.

Amendments to §57.48(a)(1) and (a)(4) implement SB 224 enacted by the 88th Legislature, 2023. Transportation Code §1006.153, Fee Imposed on Insurers, provides "motor vehicle years of insurance" means the total number of years or portions of years during which a motor vehicle is covered by insurance. Insurers are required to pay to the Authority a fee equal to $5 multiplied by the total number of motor vehicle years of insurance policies delivered, issued for delivery, or renewed by the insurer. Transportation Code §1006.153(b). Insurers are required to pay the fee not later than: (1) March 1 of each year for a policy delivered, issued, or renewed from July 1 to December 31 of the previous calendar year; and (2) August 1 of each year for a policy delivered, issued, or renewed from January 1 through June 30 of that year.

Out of each fee collected under §1006.153(b), $1 shall be deposited to the credit of the general revenue fund to be used only for coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft in this state. The money deposited to the credit of the general revenue fund for coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft in this state as described by Transportation Code §1006.153(e), may be appropriated to the authority for coordinated regulatory and law enforcement activities.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, Texas Department of Motor Vehicles has determined that for each year of the first five years the new section will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Joe Canady, Director of the Motor Vehicle Crime Prevention Authority (MVCPA) Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Canady has also determined that, for each year of the first five years new section is in effect, the public benefits anticipated as a result of the proposal include the increased grant funding for MVCPA taskforces to increase their enforcement activities, including the prevention of catalytic converter theft.

Anticipated Costs To Comply With The Proposal. Mr. Canady anticipates that there will be costs to comply with these rules. The cost to persons required to comply with the proposal is the increased fee assessed by insurers on all motor vehicle and automobile insurance policies.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the new section does not require small businesses, micro-businesses, or rural communities to comply. Therefore, the MVCPA is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The MVCPA has determined that each year of the first five years the proposed new section is in effect, no government program would be created or eliminated. Implementation of the proposed amendments would require the creation of four new employee positions. Implementation would not require an increase in legislative appropriations to the MVCPA. The proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, the proposed new section does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on October 8, 2023. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The MVCPA proposes amendment to 43 TAC §57.48 under Transportation Code §1006.101.

Transportation Code §1006.101 authorizes the MVCPA to adopt rules that are necessary appropriate to implement the powers and the duties of the authority.

CROSS REFERENCE TO STATUTE. Art. 4413(37) §6.

§57.48. Motor Vehicle Years of Insurance Calculations.

(a) Each insurer, in calculating the fees established by Transportation Code §1006.153, shall comply with the following guidelines:

(1) The single statutory fee of $5 [$4] is payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals; and

(2) When more than one insurer provides coverage for a motor vehicle during the calendar year, each insurer shall pay the statutory fee for that vehicle.

(3) "Motor vehicle insurance" as referred to in Transportation Code, Chapter 1006, means motor vehicle insurance as defined by the Insurance Code, Article 5.01(e). This definition shall be used when calculating the fees under this section.

(4) All motor vehicle or automobile insurance policies as defined by Insurance Code, Article 5.01(e), covering a motor vehicle shall be assessed the $5 [$4] fee except mechanical breakdown policies, garage liability policies, non-resident policies and policies providing only non-ownership or hired auto coverages.

(b) The Insurance Motor Vehicle Crime Prevention Authority Fee Report form and Instructions for the Computation of the Motor Vehicle Crime Prevention Authority Fee of the Comptroller of Public Accounts are adopted by reference. The form and instructions are available from the Comptroller of Public Accounts, Tax Administration, P.O. Box 149356, Austin, Texas 78714-9356. Each insurer shall use this form and follow those instructions when reporting assessment information to the Comptroller.

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 August 25, 2023.

TRD-202303157
David Richards
General Counsel
Motor Vehicle Crime Prevention Authority
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 465-1423

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43 TAC §57.52

INTRODUCTION. The Motor Vehicle Crime Prevention Authority (MVCPA) proposes new 43 Texas Administrative Code (TAC) §57.52 concerning a penalty for late payment of fee or filing of report; appeal. This new section is necessary to implement House Bill (HB) 3514 enacted during the 87th Legislature, Regular Session (2021). HB 3514 provides that the MVCPA may assess a penalty if an insurer fails to timely pay the fee required under Transportation Code §1006.153 or fails to timely file a report of the fee. An insurer that is assessed a penalty or interest for the late filing of a fee or report may appeal the assessment to the MVCPA board under the new section.

EXPLANATION.

New §57.52 implements HB 3514 enacted by the 87th Legislature, 2021. Transportation Code §1006.153, Fee Imposed on Insurers, provides "motor vehicle years of insurance" means the total number of years or portions of years during which a motor vehicle is covered by insurance. Insurers are required to pay to the Authority a fee equal to $4 multiplied by the total number of motor vehicle years of insurance policies delivered, issued for delivery, or renewed by the insurer. Transportation Code §1006.153(b). Insurers are required to pay the fee not later than: (1) March 1 of each year for a policy delivered, issued, or renewed from July 1 to December 31 of the previous calendar year; and (2) August 1 of each year for a policy delivered, issued, or renewed from January 1 through June 30 of that year.

New §57.52 provides that a penalty shall be imposed on an insurer for the delinquent payment of the required fee or the delinquent filing of the report of a fee that is required by rule. The penalty shall be assessed in the same manner as the assessment of a penalty for a delinquent tax payment or filing or a report under Tax Code §111.061(a). Interest accrues in the manner described in Tax Code §111.060 on any fee paid after the due date required under Transportation Code §1006.153(b). HB 3514 provides the Authority with the ability to audit or contract for the audit of the fees paid under Transportation Code §1006.153(b-2) and requires the Authority to establish procedures by rule that

provide a right to an appeal to an insurer assessed a penalty or interest under this section. The final decision regarding an insurer's appeal is decided by a majority vote of the Authority. The appeal of the assessment of a penalty or interest is not a contested case under Government Code, Chapter 2001.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, Texas Department of Motor Vehicles has determined that for each year of the first five years the new section will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Joe Canady, Director of the Motor Vehicle Crime Prevention Authority (MVCPA) Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Canady has also determined that, for each year of the first five years new section is in effect, the public benefits anticipated as a result of the proposal include the timely payment of the MVCPA fee and timely filing of the report of the MVCPA fee by insurers.

Anticipated Costs To Comply With The Proposal. Mr. Canady anticipates that there will be costs to comply with these rules. The cost to persons required to comply with the proposal are the payment of a penalty and any interest accrued on that penalty for the delinquent payment of the fee or delinquent filing of the report of the fee.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code, §2006.002, the department has determined that the proposed new section will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the new section does not require small businesses, micro-businesses, or rural communities to comply. Therefore, the MVCPA is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

GOVERNMENT GROWTH IMPACT STATEMENT. The MVCPA has determined that each year of the first five years the proposed new section is in effect, no government program would be created or eliminated. Implementation of the proposed new section would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the MVCPA or an increase or decrease of fees paid to the MVCPA. The proposed new section does not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, the proposed new section does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on October 8, 2023. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The MVCPA proposes new section 43 TAC §57.52 under Transportation Code §1006.101.

Transportation Code §1006.101 authorizes the MVCPA may adopt rules to administer Chapter 1006.

CROSS REFERENCE TO STATUTE. Art. 4413(37) §6.

§57.52. Assessment of Penalty or Interest for Late Payment of the Fee, Filing of Report; Appeal.

(a) Penalty for Late Payment of Fee or Filing of Report.

(1) A penalty shall be assessed against an insurer for the delinquent payment of the fee required under Transportation Code §1006.153(b-1) or the delinquent filing of any report of the fee required.

(2) The penalty for the delinquent payment of the fee or late filing of the report shall be assessed in accordance with Tax Code §111.061(a).

(3) Interest accrues in the manner described in Tax Code §111.060 on any fee paid after the due date.

(b) Appeal Procedures.

(1) An insurer that is assessed a penalty or interest by the MVCPA under Transportation Code §1006.153 may appeal the assessment by submitting an MVCPA prescribed form to the MVCPA Director within thirty (30) days of the date of the assessment.

(2) An insurer shall provide the MVCPA with any written documentation or evidence demonstrating the reasons for the late payment of the fee or late filing of the report.

(3) The MVCPA shall make a final decision on an insurer's appeal at a regularly scheduled open meeting of the MVCPA board. A final decision on the appeal shall be made by a majority vote of the MVCPA board.

(4) An appeal under this section is not a contested case under Government Code, Chapter 2001.

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 August 25, 2023.

TRD-202303158
David Richards
General Counsel
Motor Vehicle Crime Prevention Authority
Earliest possible date of adoption: October 8, 2023
For further information, please call: (512) 465-1423

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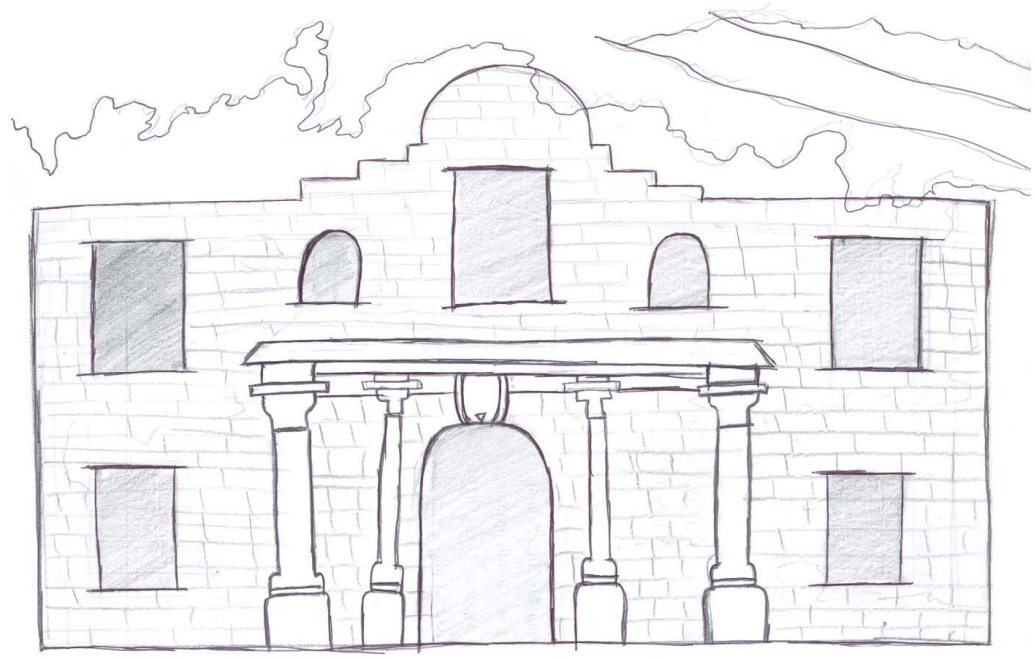

ADOPTED RULES

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 §355.105

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures. Section 355.105 is adopted without changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3958). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

Texas Human Resources Code §40.058 requires the Texas Department of Family and Protective Services (DFPS) and HHSC to "enter into contracts for the provision of shared administrative services, including...rate setting." As part of these rate-setting activities, HHSC collects annual cost reports from program providers in the 24-Hour Residential Child Care (24RCC) program and uses the data to calculate and recommend payment rates to DFPS. DFPS currently reimburses providers through two payment models: the legacy system and Community-Based Care (CBC). Under the legacy system, DFPS pays 24RCC providers a payment rate for each day of care provided. Under CBC, DFPS contracts with a Single Source Continuum Contractor (SSCC), which is responsible for finding foster homes or other living arrangements for children in state care and providing them with a full continuum of services. SSCCs subcontract with residential childcare providers to provide residential foster care in their catchment areas.

The Texas Legislature directed DFPS to implement foster care rate modernization within the Issue Docket Decisions of the 2024-2025 General Appropriations Bill, House Bill 1, 88th Legislature, Regular Session, 2023 (Article II - Health and Human Services). Cost Report modifications have been outlined in HHSC's legislative reports pertaining to the Foster Care Rate Modernization project. For example, HHSC's Pro Forma Modeled Rate and Fiscal Impact Report, as required by the 2022-2023 General Appropriations Act, Senate Bill 1, 87th Legislature, Regular Session, 2021 (Article II Special Provisions Relating to All Health and Human Services Agencies, Section 26), stated: "HHSC and DFPS must evaluate if calculating a statewide case management rate using actual SSCC cost data in lieu of resource transfer is appropriate. Using SSCC costs to calculate the CBC rate may improve the state's ability to align rates more closely to provider costs. HHSC and DFPS would have to evaluate if a cost-based approach is appropriate for CBC. A cost-based approach could result in DFPS paying provider-specific, per-catchment rates or a uniform statewide rate." The cost-based approach was also outlined in HHSC's Implementation Plan.

The amendments update the excusal criteria to account for providers who have subcontracted with an SSCC under CBC by adding SSCC referrals into the calculation of state-placed days. The amendments also require all SSCCs to submit cost reports on the state fiscal year rather than the provider's current fiscal year. The amendments also provide clarifying edits throughout the rule.

COMMENTS

The 21-day comment period ended August 11, 2023.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §40.058, which provides for HHSC to provide administrative, rate setting, and contracting services on behalf of DFPS. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 August 21, 2023.

TRD-202303080
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 10, 2023
Proposal publication date: July 21, 2023
For further information, please call: (737) 867-7817

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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR

INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.727

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §355.727, concerning Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services. Section 355.727 is adopted without changes to the proposed repeal as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3964). This repeal will not be republished.

BACKGROUND AND JUSTIFICATION

The rulemaking repeals §355.727, concerning Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services. The temporary add-ons expire on August 31, 2023. Funding associated with the add-ons will be incorporated into the base rates for supervised living and residential support services in the HCS waiver program.

COMMENTS

The 21-day comment period ended August 11, 2023.

During this period, HHSC did not receive any comments regarding the proposed repeal.

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; 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 medical assistance (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 August 21, 2023.

TRD-202303078
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 10, 2023
Proposal publication date: July 21, 2023
For further information, please call: (512) 867-7817

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SUBCHAPTER M. MISCELLANEOUS PROGRAMS
DIVISION 6. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

1 TAC §355.9080

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.9080, concerning Reimbursement Methodology for Prescribed Pediatric Extended Care Centers. Section 355.9080 is adopted without changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3965). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment removes the requirement that the payment rate for Prescribed Pediatric Extended Care Centers (PPECC) cannot be more than 70 percent of the average hourly Private Duty Nursing rate under the Texas Health Steps (THSteps) Program. The amendment would implement a rate methodology change for PPECC reimbursement approved through HHSC's biennial fee review process and would enable PPECC rate methodology to reflect allowable provider costs.

COMMENTS

The 21-day comment period ended August 11, 2023.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

The 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 August 21, 2023.

TRD-202303077
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 10, 2023
Proposal publication date: July 21, 2023
For further information, please call: (512) 867-7817

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 5. CARBON DIOXIDE (CO2)

The Railroad Commission of Texas (the "Commission") adopts amendments to §5.102 (relating to Definitions) in Subchapter A;

and in Subchapter B adopts amendments to §§5.201 and 5.203 - 5.207 (relating to Applicability and Compliance; Application Requirements; Notice of Permit Actions and Public Comment Period; Fees, Financial Responsibility, and Financial Assurance; Permit Standards; and Reporting and Record-Keeping, respectively), with changes to the proposed text as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3452). The Commission adopts changes in §§5.102, 5.201(h), 5.201(i), 5.203(b), 5.203(f), 5.203(k), 5.204(a), 5.205(c) and (i), 5.206(d), 5.206(e), 5.206(f), 5.206(g), 5.206(k), 5.206(m), and 5.207(b). The rules will be republished.

The Commission adopts the amendments to ensure that the rules are as stringent as the requirements of the U.S. Environmental Protection Agency ("EPA") to support the Commission's application to EPA for enforcement primacy for the federal Class VI Underground Injection Control (UIC) program.

EPA protects underground sources of drinking water (USDWs) by regulating the injection of fluids underground for storage or disposal. The Safe Drinking Water Act (SDWA) and the UIC program provide the primary regulatory framework. From the early 1980s until 2010, EPA regulated five classes of wells according to the type of fluid injected, the depth of injection, and the potential to endanger USDWs. Historically, most states have sought and been granted primacy over one or more classes of wells. For example, most states have primacy over Class II wells, in which fluids are injected for natural gas and oil production, hydrocarbons storage, and enhanced recovery of oil and gas.

In 2010, EPA promulgated rules creating a sixth well class (Class VI) specifically to regulate the injection of carbon dioxide ("CO_2") into deep subsurface rock formations. EPA established minimum technical criteria for permitting, site characterization, area of review and corrective action, financial responsibility, well construction, operation, mechanical integrity testing, monitoring, well-plugging, post-injection site care, and site closure requirements.

Under the SDWA, EPA may delegate its authority to implement and enforce the UIC program to states upon application. If EPA approves a state's application, the state assumes primary enforcement authority (i.e., primacy) over a class or classes of wells. Until a state receives primacy, EPA directly implements the UIC program through its regional offices.

The State of Texas has established a statutory framework for projects involving the capture, injection, sequestration or geologic storage of anthropogenic carbon dioxide. The statutes require the state to pursue primacy for the Class VI UIC program. After almost a decade of little interest, interest in carbon capture and geologic sequestration or storage has increased over the past several years prompting the Commission to resume efforts to gain primacy for the Class VI UIC program.

The Commission adopted initial regulations to implement the Class VI UIC program effective December 20, 2010, and amended those regulations in 2022 to reflect changes in the Texas statutes and to ensure that the state's program meets the minimum federal requirements for Class VI UIC wells. The State submitted to EPA its official application for primacy of the Class VI UIC program on December 19, 2022. Included in that application was a cross-walk comparison (i.e., a table comparing state and federal requirements). In March of 2023, EPA provided comments to the cross-walk comparison and recommended rule amendments in a few areas. These amendments respond to EPA's recommendations.

The Commission received 30 comments -- six from associations (Greater Houston Partnership, Reliable Energy Alliance, Texas Chapter of National Association of Royalty Owners, Texas Chemical Council, Texas Industry Project, and the Texas Oil and Gas Association); two from companies or organizations (Environmental Defense Fund and Commission Shift) and 21 from individuals. The Commission also received one comment submitted on behalf of the following Texas-based organizations and individuals ("the Texas-based Organizations"): Air Alliance Houston, Another Gulf is Possible Collaborative, Bayou City Waterkeeper, Better Brazoria: Clean Air & Water, Carrizo Comecrudo Tribe of Texas, Chispa Texas, Clean Energy Now Texas, Clean Water Action, Coalition of Community Organizations, Coastal Alliance to Protect our Environment, Coastal Bend Sierra Club, Commission Shift, Fair Housing and Neighborhood Rights, Fenceline Watch, For the Greater Good, G-Forensic, Greater Edwards Aquifer Alliance, Healthy Gulf, Heiko Stang, Ingleside on the Bay Coastal Watch Association, Lone Star Chapter, Sierra Club, Mi Familia Vota, New Liberty Road Community Development Corporation, Port Arthur Community Action Network, Property Rights and Pipeline Center, Public Citizen, Rio Grande International Study Center, Sanbit, Inc., Sister Elizabeth Riebschlaeger, Texas Campaign for the Environment, Texas Environmental Justice Advocacy Services, and Turtle Island Restoration Network. The Commission appreciates these comments.

General Comments

The Texas Chemical Council (TCC) and the Texas Oil and Gas Association (TXOGA) generally support the Commission's application for primacy from the EPA for the permanent geologic sequestration and storage of carbon dioxide via Class VI underground injection control wells. TCC and TXOGA greatly appreciate both the EPA and the Commission's efforts towards achieving that goal.

The Texas Industry Project (TIP) expressed the belief that carbon capture and storage is a critical tool for reducing carbon dioxide in the atmosphere, and that Texas is uniquely situated to become a national leader in geologic storage of carbon storage. TIP stated that it understands the Commission's proposed amendments to its Chapter 5 rules are intended to support the Commission's application for authority to enforce the federal Class VI UIC program in Texas by ensuring that the Commission's rules are at least as stringent as EPA's Class VI rules and to respond to comments from the EPA on the Commission's current rules. TIP expressed support both the proposed amendments and the Commission's request for primacy to administer the Class VI UIC program in Texas.

The Reliable Energy Alliance (REA) expressed support for the proposed amendment designating the Commission as the sole authority in the state over onshore and offshore injection and geologic storage of anthropogenic CO_2. REA also supports the Commission's application for primacy from EPA for administration of the Class VI injection well program. Streamlining the regulation of Class VI injection in Texas to one state agency will encourage and expedite the use of carbon capture utilization and storage (CCUS) in the state. REA believes Texas must support the CCUS industry to protect its oil and gas industries that employ hundreds of thousands of Texans. Our nation depends upon Texas' fossil fuels production, and Texas needs to be ready to meet future demand. Texas can meet the growing energy in demand from its oil and gas production, and CCUS can be an optional component of that when producers desire to de-

carbonize any process where carbon is a byproduct. As global energy demand continues to grow, supporting and growing the CCUS industry in Texas will be vital to ensure the state's fossil fuel industry meets increasing energy demand while having options to control CO_2 emissions.

The Greater Houston Partnership expressed support for the proposed amendments and the furtherance of carbon capture use and storage in Texas. The rapid innovation and progress of the Texas energy industry and its advancements in lower-carbon technologies such as CCUS require a robust regulatory framework. If Texas is to remain a global leader in CCUS, we must pursue regulatory policies and procedures to streamline the permitting process. By allowing the Commission to have sole regulatory authority and primary jurisdiction over Class VI wells, we create a stronger regulatory pathway to achieving the development of large-scale CCUS investments and help advance our state's energy competitiveness. We applaud the Commission and EPA for their collaboration and commitment in working to ensure the effective implementation and oversight of this framework.

The Commission appreciates the support of these commenters.

Ms. Diane Teter commented that carbon dioxide should be regulated by congressional mandate. Mr. Patrick A. Nye commented that geologic storage of carbon dioxide is in its infancy of development. The Commission should align with EPA for the first five years of time to ensure the health and safety of the populations at risk as well as groundwater. Until there is a real reform and acknowledgement of climate change and the safeguards to environmental justice communities as well as all communities, EPA should rule. Mr. Nye opposed the Commission taking over the Class VI program and stated that EPA should show the safer way forward.

Ms. Cyndi L. Valdes, Ms. Diane Teter, Ms. Julie Nye, Ms. Bess Willis, Ms. Becky Rector, Ms. Bonnie Vechell, Ms. Ann R. Nyberg, and the Texas-based Organizations expressed opposition to the Commission having primacy for the Class VI program because they believe that the Commission has an inherent conflict of interest because they receive campaign donations by the industries they regulate. The number of uncapped wells in Texas is growing every day and the Commission cannot keep up with the current job they have. The Commission has a horrible track record of enforcing regulations and will fail to protect residents who reside next to potential carbon dioxide storage. Ms. Valdes commented that she does not want the storage next to communities and elementary schools. Ms. Linda Bennett commented that, without close oversight and precise engineering on these carbon injection facilities, so much risk could occur and the Commission does not have the capabilities, manpower, structure to handle either of these very necessary components to be the overseeing regulatory agency. Ms. Julie Nye and Ms. Bennett expressed the belief that the Commission is not the proper authority to regulate carbon sequestration because it has a history of not enforcing current regulations on the oil and gas industry. Mr. Don McCown commented that, while the proposed new Chapter 5 rules would be an improvement over the current statute, he shares Commission Shift's concern that federal regulations for carbon dioxide injection do not take into account Texas-specific issues, and that the Commission's new rules will not be strong enough to protect land and communities.

The Commission notes that in the federal Safe Drinking Water Act of 1974 (Act), Congress directed EPA to develop underground injection regulations to guide states in establishing their own programs. Congress intended that the states have the responsibility for enforcement of the Act, provided the state program meets minimum federal requirements. State law provides that the Commission has exclusive jurisdiction over geologic storage of carbon dioxide (Texas Water Code, §27.041). State law (Texas Water Code, §27.048) requires that the Commission seek federal primary enforcement authority for the Class VI underground injection control program. Furthermore, in order for EPA to grant primacy to Texas, the Commission's requirements must meet the minimum federal requirements. The states are in the best position to address state-specific issues and conditions. The Commission's review of applications for the geologic storage of carbon dioxide will take into account the specific conditions at the proposed project location.

With respect to the Commission's UIC program, EPA performs annual evaluations of the Commission's UIC program performance. These annual evaluations have been positive. EPA Region 6's 2021 annual evaluation acknowledged that the Commission's UIC program compliance surveillance and enforcement program for Class II and III injection wells regulated by the Commission appears to be effective. A large percentage of the permitted injection wells in Texas were inspected in FY 2020 and the Commission also collected and reviewed operator-submitted monitoring information from a large percentage of the Class II well inventory. Those numbers assure more than adequate inspection and monitoring surveillance actions. The 2021 annual evaluation specifically noted innovative measures taken by the Commission to address program challenges, such as induced seismicity and continued improvements of data reporting and recordkeeping.

Mr. Brian Hillman, Ms. Malinda Huffman, Mr. Francisco Martinez, Ms. Leslie Meyer, and Ms. Meg Davis expressed concern about the issue of carbon dioxide injection and the risk these projects pose to the health and safety of the land, water, and communities. Injecting highly pressurized carbon dioxide waste deep into the earth can pose risks to our communities. Without consistent oversight, harmful materials like lead, arsenic, and strong acids can leak into underground sources of drinking water. The Commission has a responsibility to ensure the highest possible safety conditions for the people and places of Texas that will be impacted by this new carbon waste disposal technology.

Similarly, Ms. Linda Bennett and Mr. Andy Davis expressed concern with carbon sequestration or carbon dioxide injection and the risk these projects might pose to water and land in Texas. Ms. Bennett commented that she has not seen the science that would allow her to act on the financial opportunity that might be realized through the leasing of their pore space. Ms. Bennett expressed concern that there is no way that the injected carbon dioxide can be restrained accurately underground and not cause harm to our neighbors through trespass into their pore space. Ms. Bennett expressed concern that the injected carbon dioxide will migrate back up to the surface in an unintended location, causing damage and potential human risks. She requested that Texas approach this venture cautiously and potentially wait to see how the science turns out from the two carbon sequestration sites that are up and running in the U.S. Ms. Bennett requested that the science become public knowledge so Texans can make educated decisions on this issue. Mr. Beau Bennett expressed concern about introducing carbon injection under Texas soil and stated that he does not believe that the science proves that carbon sequestration can be done safely. Mr. Bennett further commented that migration of the carbon dioxide would be extremely costly and damaging to Texas and its residents.

Geologists Mr. Patrick A. Nye and Mr. Payton Campbell also expressed concern that geologic storage of carbon dioxide has yet to be proven safe and reliable. They stated that although the Commission has a long history of managing various well types in the past, Chapter 5 as written does not resolve the complexities in the evaluation process to minimize risks to the health and safety of residents and groundwater within or near the area of review. Injection sites appear to be more of an area of convenience than that of a scientific thought-out evaluation with sound geoscience evidence. Mr. Patrick A. Nye and Mr. Payton Campbell asked what assurances the Commission would enact for the protection of the public's health and safety.

The Commission disagrees that geologic storage of carbon dioxide is unproven technology. In its most recent Working Group III report *Climate Change 2022: Mitigation of Climate Change* report, the International Panel on Climate Change (IPCC) reaffirmed the central role that CCUS will play reducing carbon dioxide levels in the atmosphere. Carbon capture and storage technologies have been proven at commercial scale and there is an extensive network of global knowledge about carbon dioxide storage. Geologic storage of carbon dioxide for the purpose of reducing carbon dioxide emissions began in 1996 with the Sleipner project in Norway. Today, there are 12 commercial scale facilities capturing and safely storing carbon dioxide in the United States.

Long-term geologic storage of carbon dioxide is possible with today's technology. The federal Class VI rule, and the Commission's rules, build on existing underground injection control program requirements, with extensive tailored requirements that address carbon dioxide injection for long-term storage to ensure that wells used for geologic sequestration are appropriately sited, constructed, tested, monitored, funded, and closed. These regulations include specific criteria for Class VI wells, such as extensive site characterization requirements, injection well construction requirements for materials that are compatible with and can withstand contact with carbon dioxide over the life of a geologic storage project, injection well operation requirements, comprehensive monitoring requirements that address all aspects of well integrity, carbon dioxide injection and storage, and ground water quality during the injection operation and the post-injection site care period; financial responsibility requirements assuring the availability of funds for the life of a project (including post-injection site care and emergency response); and reporting and recordkeeping requirements that provide project-specific information to continually evaluate Class VI operations and confirm USDW protection. The applicant is required to demonstrate the presence of an adequate confining zone consisting of a geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone that acts as a barrier to fluid movement. In addition, the applicant is required to take action to correct any penetration into the injection zone to eliminate the potential that that penetration could act as a conduit for injected fluids to migrate to another zone or to the surface.

The Commission does agree that, as with any activity, there are potential risks associated with the geologic storage of carbon dioxide. However, the federal and state regulations are designed to mitigate those potential risks. The rules are based on the existing underground injection control regulatory framework, with modifications to address the unique nature of CO_2 injection for geologic storage. These rules establish a new class of well, Class VI, and set minimum technical criteria for Class VI wells for the purposes of protecting underground sources of drinking water. The rules set minimum technical criteria for Class VI wells to protect underground sources of drinking water from endangerment, including: site characterization that includes an assessment of the geologic, hydrogeologic, geochemical, and geomechanical properties of the proposed geologic storage site to ensure that Class VI wells are located in suitable formations; computational modeling of the area of review that accounts for the physical and chemical properties of the injected CO_2 and is based on available site characterization, monitoring, and operational data; periodic reevaluation of the area of review to incorporate monitoring and operational data and verify that the CO_2 plume and the associated area of elevated pressure are moving as predicted within the subsurface; well construction using materials that can withstand contact with CO_2 over the life of the project; robust monitoring of the CO_2 stream, injection pressures, integrity of the injection well, ground water quality and geochemistry, and monitoring of the CO_2 plume and position of the pressure front throughout injection; comprehensive post-injection monitoring and site care following cessation of injection to show the position of the CO_2 plume and the associated area of elevated pressure to demonstrate that neither pose an endangerment to underground sources of drinking water; and financial responsibility requirements to ensure that funds will be available for all corrective action, injection well plugging, post-injection site care, site closure, and emergency and remedial response.

When injected into an appropriate receiving formation, CO_2 is sequestered by a combination of trapping mechanisms, including physical and geochemical processes. Physical trapping occurs when the relatively buoyant CO_2 rises in the formation until it reaches a stratigraphic zone with low permeability (i.e., geologic confining system) that inhibits further upward migration. Physical trapping can also occur as residual CO_2 is immobilized in formation pore spaces as disconnected droplets or bubbles at the trailing edge of the plume due to capillary forces. A portion of the CO_2 will dissolve from the pure fluid phase into native ground water and hydrocarbons. Preferential sorption occurs when CO_2 molecules attach to the surfaces of coal and certain organic rich shales, displacing other molecules such as methane. Geochemical trapping occurs when chemical reactions between the dissolved CO_2 and minerals in the formation lead to the precipitation of solid carbonate minerals. The timeframe over which CO_2 will be trapped by these mechanisms depends on properties of the receiving formation and the injected CO_2 stream. The effectiveness of physical CO_2 trapping is demonstrated by natural analogs in a range of geologic settings where CO_2 has remained trapped for millions of years. For example, CO_2 has been trapped for more than 65 million years under the Pisgah Anticline, northeast of the Jackson Dome in Mississippi and Louisiana. Other natural CO_2 sources include the McElmo Dome, Sheep Mountain, and Bravo Dome in Colorado and New Mexico.

Many of the injection and monitoring technologies that may be applicable to geologic storage are commercially available today and will be more widely demonstrated over the next 10 to 15 years. The oil and gas industry has over 35 years of experience of injection and monitoring of CO_2 in the deep subsurface for the purposes of enhancing oil and gas production. This experience provides a strong foundation for the injection and monitoring technologies needed for commercial-scale geologic storage.

Ms. Diane Teter commented that the new permit system for carbon dioxide is not designed for so many risks that this untested transport pipeline/hub system poses. CO_2 is a corrosive gas and when mixed with various water impurities and other gases as NOx and SO2, the full consequences are unknown.

The Commission notes that the rules require the chemical composition and physical characteristics of the carbon dioxide streams be known as part of the initial permitting process, as well as during operation of the well, to ensure that these carbon dioxide streams can be injected in a manner that is protective of human health and the environment and underground sources of drinking water. The rules address the quality and quantity of impurities by requiring operators to submit information on the source of the carbon dioxide and its physical and chemical properties. Specifically, the rules require the operator to submit data about the site, including an analysis of the chemical and physical characteristics of the carbon dioxide stream and information on the compatibility of the carbon dioxide stream with fluids in the injection zone and minerals in both the injection and the confining zones and the materials used to construct the well. This information can help the director determine the potential for geochemical reactions between the injectate (the carbon dioxide stream) and the host geologic formations, which could result in the plugging of pore spaces or the dissolution of formation minerals. Analysis of the carbon dioxide stream will provide information about any impurities that may be present and whether such impurities might alter the corrosivity of the injectate down-hole. Such information is necessary to inform well construction and the project-specific testing and monitoring plan and enable the operator to optimize well operating parameters while ensuring compliance with the Class VI permit. The analysis of the carbon dioxide stream must be conducted prior to commencing injection and throughout injection operations at an appropriate frequency based on the source of the carbon dioxide stream and the likelihood of variability in the injectate composition. The details of the sampling process and frequency must be described in the director-approved, site-specific testing and monitoring plan.

Neither the federal rules nor the Commission's rules set generic purity standards for carbon dioxide injectate streams (e.g., a percent carbon dioxide). The injection of carbon dioxide streams, including incidental associated substances derived from the source materials and the capture process, can be performed in a protective manner at a permitted UIC Class VI well. Regardless of the precise contaminants, and their concentrations, the UIC Class VI permitting requirements take into account the physical and chemical characteristics of the carbon dioxide stream as part of establishing the appropriate conditions for the successful confinement of the CO_2 in a manner that is protective of underground sources of drinking water.

Ms. Teter commented that there is a whole geologic ecosystem beneath the earth's surface which will be impacted and the consequences are unknown. Ms. Teter also commented that there are geologic sites which are hazardous and/or incompatible with CO_2 storage and should be disseminated to the public.

The Commission notes that Class VI permit applicants must provide extensive information about the local and regional geology and hydrogeology of a proposed geologic storage site. Both the federal and state regulations require an applicant to characterize the geologic storage site and to demonstrate that the proposed site is suitable for the geologic storage of carbon dioxide. The applicant must demonstrate that the area has a suitable geologic system, consisting of an injection zone with sufficient capacity to receive the volume of carbon dioxide proposed to be injected, and a confining zone that is free of transmissive faults or fractures. Information concerning the characterization of the site will be provided to the public through the draft permit and fact sheet that the Commission is required to prepare in accordance with §5.202.

Mr. Paul Gingrich commented that Enbridge has a terrible track record for safety and staying within pollution limits. He believes its project would be better served in a larger metro area like Houston where resources and response to any issues arising can be better dealt with and where it would not be adjacent to his residential population. The project presents an unnecessary danger to water wells, which many people use in the proposed project area.

The Commission does not understand this comment. The Commission has not received an application from Enbridge.

EPA commented that 40 CFR §144.52(b)(2) and (3) are missing from the state regulations.

The Commission notes that the requirements of 40 CFR §144.52(b)(2) and (3) are located in §5.206(o)(2)(P).

Mr. Patrick A. Nye and Mr. Payton Campbell recommended that the Commission form a new Class VI division to include a team of licensed petroleum engineers, licensed geoscientists, petrophysicists, geochemical geologists, and geophysicists to evaluate each aspect of the application and operations and that this team report to the Commission and the director rather than the director having sole discretion. Mr. Patrick A. Nye, Mr. Payton Campbell, and Ms. Cyndi L. Valdes commented that as Chapter 5 is written, it is clear the director would have too much power to control all aspects of the Class VI decision making. These commenters asked for clarification as to how the engineering, petrophysical, geochemical, geological, and geophysical checks and balances that would ensure public safety and freshwater protection will be disseminated to the director.

The Commission notes that because of the extent and complexity of the information that must be reviewed in response to Class VI permit applications and evaluated throughout the operational and post-injection phases of a Class VI project, the Commission plans to implement a team approach. The duties and responsibilities for the Class VI UIC program will predominantly be handled by Underground Injection Control (UIC) staff of the Oil and Gas Division of the Railroad Commission. The Class VI UIC Manager (a geologist or engineer) will have a significant technical management role in the program, supervising a team of geologists and engineers selected for the Class VI UIC team on the basis of their experience and expertise. Staff have in-house expertise (and access to outside contractors, if needed) with skills in the technical and policy areas relevant to evaluating Class VI permit applications, issuing Class VI permits, and overseeing geologic storage projects throughout the life of the projects.

Mr. Patrick A. Nye and Mr. Payton Campbell commented that the operator should be penalized for non-compliance with the timing and monitoring regarding reports sent to the Commission. Mr. Nye and Mr. Campbell commented that reporting of the status of the well integrity, equipment, and the area of review is critical to adherence to the EPA rules and asked whether the Commission will levy penalties and fines for non-compliance. Mr. Nye and Mr. Campbell also requested information as to how the Commission will assess penalties for non-compliance of the permit. The Organizations asked whether the Commission will potentially assign violations or penalties for non-compliance based on failure to submit reports, submitting incomplete reports, or reports indicating that an underground source of drinking water is at risk without remedial actions having been described. The

commenters also requested clarification as to whether penalties will be greater than the cost of noncompliance.

The Commission has the authority to pursue enforcement action, including penalties, for noncompliance with the requirements of Subchapter B and a permit. The Commission's enforcement process is described in Appendix C (Office of General Counsel Enforcement Process) in the Fiscal Year 2023 Oil & Gas Monitoring and Enforcement Plan, which can be found at rrc.texas.gov/media/2bwbeqtk/o-g-monitoring-enforcement-plan-fy-2023.pdf.

The Commission makes no changes in response to the comments previously discussed.

Regarding the Commission's proposal preamble, Mr. Patrick A. Nye and Mr. Payton Campbell commented that Commission jurisdiction to ensure standards comply with federal requirements of EPA set up special interest-bearing funds consisting of penalties. This alone will require more personnel. Further, Mr. Patrick A. Nye and Mr. Payton Campbell recommended that the Commission increase personnel to review applications and compliance until assurances can be made that it is safe for public health and water.

The Commission does not understand the first part of this comment. With respect to the need for additional personnel, the Commission will devote additional resources to the program as the program grows to meet or exceed requirements for program performance. The Commission makes no change in response to this comment.

Mr. Patrick A. Nye and Mr. Payton Campbell commented that micro-businesses may have a higher risk of bankruptcy and potentially avoidance of compliance. They recommended that micro-businesses should have receipts of $2 million and should include AI or any corporation financially able to secure development and dissolution of facilities.

The comment concerns language in the preamble relating to the requirements of Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect. The term "micro-business" is defined in Texas Government Code §2006.001 and cannot be changed by the Commission. The Commission does not anticipate that micro-businesses will apply for Class VI permits under Subchapter B. The Commission makes no change in response to this comment.

Rule-specific comments

§5.102

Mr. Robert F. Van Voorhees expressed support for the proposed amendments to the definition of anthropogenic carbon dioxide at §5.102(2). This is a very important revision to clarify that direct air capture is included as a means of capturing anthropogenic CO_2.

TCC and TXOGA expressed support for the amended definition in §5.102(2) of anthropogenic carbon dioxide to include carbon dioxide that has been captured from, or would otherwise have been released into, the atmosphere. This revision clarifies the applicability of the regulations to carbon dioxide resulting from direct air capture technologies. TCC and TXOGA also expressed support for the corresponding revision to the definition of "carbon dioxide (CO_2) stream" in §5.102(7). And, both commenters expressed support for the revisions to the definitions of "anthropogenic CO_2 injection well" in §5.102(3) and "geologic storage" in §5.102(28) to clarify that the regulations apply to the various phases of carbon dioxide (i.e., gaseous, liquid, or supercritical). This revision is consistent with the federal Class VI UIC regulations, which refer to different phases of carbon dioxide.

Mr. Van Voorhees also supports the amendment to the definition of "geologic storage" in §5.102(28), stating that it is important to clarify that the regulations apply to the various phases of carbon dioxide (gaseous, liquid, or supercritical) for consistency with the federal Class VI UIC regulations. Mr. Van Voorhees expressed support for the amendments to the definition of §5.102(30) and stated that it is important to acknowledge that an operator and the owner of the pore space may use various mechanisms to grant the legal right to access and use the pore space. Mr. Van Voorhees expressed support for the amendment to §5.102 to add a definition for stratigraphic test well and stated that the Commission should adopt the revision as proposed to recognize the importance of allowing injectivity testing in a stratigraphic test well to improve the success of geologic sequestration projects.

The Commission appreciates the support of these commenters.

NARO-TX recommended that the Commission revise the definition of "good faith claim" in §5.102(30) to recognize rights of mineral owners in underground geologic formations, including within and near geologic storage facilities. NARO-TX recommended the Commission define good faith claim as: "a factually supported claim based on a recognized legal theory to a perpetual property interest*, including all mineral interests*, in pore space to be used for geologic storage of carbon dioxide . . ."

TXOGA recommended that the definition for "good faith claim" be removed rather than amended because a good faith claim, as referenced in §5.206(b)(9), is a determination to be made by the applicant based on the property interests it needs and the property interests it has obtained and does not require definition by the Commission. However, if the Commission sees the need to define this term, TXOGA notes that the proposed definition modifies good faith claim to encompass "a perpetual property interest" rather than "a continuing possessory right." TCC and TXOGA commented that this would drastically change the nature of said property interest and contrasts with how the term has been used in other Commission regulations. See, e.g., 16 TAC §3.15(a)(5) relating to Surface Equipment Removal Requirements and Inactive Wells. As a result, the proposed definition broadens the scope of a good faith claim beyond how it has been used previously without clear explanation and could be construed to exclude the use of certain types of property interests, such an easement, which may be utilized for certain activities. Therefore, if the term must be defined, TCC and TXOGA requested that the Commission revise the proposed definition to refer to "continuing possessory right" or "continuing property interest."

In response to these comments, the Commission has revised the definition of "good faith claim" to "a factually supported claim based on a recognized legal theory to a *continuing possessory right* in pore space, *such that the pore space* can be used for geologic storage of carbon dioxide."

EPA commented that there are many instances where EPA regulations reference "owner or operator" but the state regulations only use the term "the operator." Similarly, TXOGA requested clarification on the Commission's use of "operator" throughout the Class VI UIC well provisions as opposed to "owners and operators" as used in the federal regulations. For reference, "operator" is defined in §5.102(21) as a "person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the

rules and regulations regarding the permitting, physical operation, closure, and post-closure care of a geologic storage facility, or such person's authorized representative." "Owner" is undefined. The federal UIC regulations at 40 CFR §144.3 state that "the owner or operator of any 'facility or activity'" are subject to regulation under the UIC program. TCC and TXOGA requested clarification on how the use of "operator" as opposed to "owner and operator" will impact the applicability of these provisions on their members.

The Commission notes that 40 CFR §144.3 defines "owner or operator" as the owner or operator of any "facility or activity" subject to regulation under the UIC program. The Commission holds the "operator" responsible for permitting and compliance. The Commission has defined "operator" at §5.102(38) as a "person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the rules and regulations regarding the permitting, physical operation, closure, and post-closure care of a geologic storage facility, or such person's authorized representative." Although the Commission holds the "operator" responsible for compliance, the Commission agrees that, if the owner and operator are two different entities, either may demonstrate financial responsibility. Therefore, the Commission has added definitions for "owner or operator" and for "owner" and has changed "operator" to "owner or operator" in the sections relating to financial responsibility.

The Commission also notes that EPA granted primacy to North Dakota for its Class VI UIC program and the North Dakota regulations at Chapter 43-05-01 use the term "operator" rather than "owner or operator." In addition, the Commission's Class III brine mining regulation at 16 TAC §3.81 relating to Brine Mining Injection Wells, for which EPA granted primacy under Section 1422 of the Safe Drinking Water Act, uses the term "operator."

EPA commented that "Director" should be capitalized.

The Commission declines to make changes in response to EPA's comment because the Commission finds that whether the term is capitalized is not material. The definitions of "Director" and "State Director" in 40 CFR §144.3 both use the term "director" (lower case). In addition, EPA granted primacy to the state of North Dakota, whose regulations at Chapter 43-05-01 use the term "commission" (lower case) in lieu of "Director." Furthermore, the Railroad Commission's brine mining rule at 16 Texas Administrative Code §3.81 was approved by EPA effective March 29, 2004, under Section 1422 of the Safe Drinking Water Act and uses the lower case "director."

TXOGA commented on the issue of defining "stratigraphic wells." In §5.201 (relating to Applicability and Compliance), TXOGA highlighted that "stratigraphic wells" are a newly defined term and are not included in EPA regulations. Operators are currently encountering challenges in other states with the emerging regulation of stratigraphic and other carbon sequestration-related wells under traditional oil and gas rules. While it makes sense to regulate certain wells under the Commission's oil and gas rules to leverage existing processes and programs, stratigraphic wells do not have any relationship to oil and gas. Thus, while TXOGA believes the Commission is the appropriate agency to manage these wells, TXOGA recommended a clear delineation between the programs to avoid creating an opportunity to mischaracterize stratigraphic wells as oil and gas wells.

The Commission defined the term "stratigraphic test well" in §5.102 as "An exploratory well drilled for the purpose of gathering information in connection with a proposed carbon dioxide geologic storage project, including formation testing to obtain information on the chemical and physical characteristics of the injection zones and confining zones. Such testing may include injectivity testing." One purpose for adding this definition and the corresponding language in §5.202(h) was to clarify that such wells are not injection wells, and are, therefore, not subject to the federal Underground Injection Control program requirements. Another purpose for adding both the definition and the language in §5.202(h) was to clarify that an operator must apply for a permit to drill prior to drilling a stratigraphic test well, must comply with the requirements for drilling and completing the well, must submit a completion report once the well is completed, and must comply with the requirements to plug the well. In addition, the Commission added the definition and the language in §5.202(h) to ensure that any operator who drills a stratigraphic test well and plans to later convert the well to a Class VI injection well knows that the well must be constructed in compliance with the Class VI injection well requirements of Subchapter B, Chapter 5. The Commission finds the language is warranted and makes no change in response to this comment.

§5.201

Mr. Van Voorhees expressed support for the amendment to §5.201(h) requiring an operator to apply for a permit to drill (Form W-1) prior to drilling a stratigraphic test well, notify the UIC Section of the application, and submit a completion report (Form W-2/G-1) once the well is completed. Mr. Van Voorhees stated that the provision that clarifies the availability of conversion for stratigraphic test wells to Class VI wells. It also provides useful guidance on what compliance is required for construction of the wells.

The Commission appreciates this comment.

TCC and TXOGA commented that the proposed language in §5.201(h) requires an operator to "apply for a permit to drill (Form W-1) prior to drilling a stratigraphic test well, notify the UIC Section of the application, and submit a completion report (Form W-2/G-I) once the well is completed." Under this provision, if the operator plans to convert the stratigraphic test well to a Class VI injection well, the well construction shall meet all requirements of this subchapter for a Class VI injection well. Any stratigraphic test well drilled for exploratory purposes only shall be governed by the provisions of the Commission's rules in Chapter 3 applicable to the drilling, safety, casing, production, abandoning, and plugging of wells. TCC and TXOGA note that this differs from current regulations, as Class V wells would not generally be subject to primacy requirements under the Class VI program. TCC and TXOGA requested clarifying language regarding these requirements. Practically, this revision seems to require that the ultimate purpose of the well be predetermined, and the well be constructed for that purpose before knowing whether and how the well can even be used, nullifying the need for an exploratory well in the first instance. Specifically, the commenters requested that the regulation be revised so that it is evident that these requirements are not applicable to wells that are not subsequently converted to Class VI injection wells or are converted to Class V injection wells. An example of such a well could be a monitoring well. TCC and TXOGA fully understand and support there may be additional well criteria upon conversion but disagrees with any requirement that applies such heightened requirements speculatively.

The Commission disagrees. Both the federal rules and the Commission's rules require that an operator have a permit under the

Class VI regulations before constructing the well. The Commission understands that some operators plan to drill a stratigraphic test well and convert that well to a Class VI well in the future. Therefore, that well must be constructed to meet the Class VI injection well requirements. As noted, the Commission finds that the stratigraphic test well is a type of "exploratory well" not subject to underground injection control regulations. Nor is a stratigraphic well a Class V well under the Commission's program. The Commission anticipates that operators will "predetermine" the use of these wells. The Commission makes no change in response to this comment.

Additionally, TXOGA requested that §5.201(h) be further amended to state that an operator may obtain data from site characterization though offset well data in the field as an alternative to drilling a stratigraphic test well.

The Commission partly agrees and adopts §5.201(h) with a change. The Commission also deleted the reference to "production" in this subsection because stratigraphic wells are not "production" wells.

The Texas-based Organizations commented that §5.201(h) would allow operators to drill a stratigraphic test well and convert that test well to a Class VI well later on. This would allow an initial borehole to be drilled before an operator confirms complete financial assurance for well plugging and before interested parties receive notice of the well. This could result in additional groundwater contamination if the Commission is allowing companies to create potential conduits for groundwater contamination before it ensures the companies or the Commission have sufficient funds available to prevent groundwater contamination. The financial assurance requirements under §3.78 of this title, relating to Fees and Financial Security Requirements, are insufficient to ensure that the well owners or the Commission will have enough funds on hand to plug the wells.

The Commission disagrees. The purpose of a stratigraphic test well is to obtain data concerning the formations through which the well is drilled. This data will be used in modeling the area of review for the Class VI injection well. The stratigraphic test well may then be plugged, converted to a monitor well, or converted to a Class VI injection well (if construction of the well meets the requirements for a Class VI well). The operator is required to maintain financial assurance for the well under §3.78 of this title. If the well will be plugged, the Commission will require that the well be properly plugged before injection begins. If the well is converted to a Class VI injection well, the Commission will require financial assurance under Chapter 5 to ensure that the Class VI well is plugged upon closure of the geologic storage facility.

Mr. Patrick A. Nye and Mr. Payton Campbell asked whether the logging, coring, and pressure testing will be standardized for stratigraphic test wells and for all new wells drilled within the AOR. They also asked that the definition of stratigraphic test well include injectivity testing of injection zone and 3-D seismic.

The Commission declines to make changes in response to these comments. The purpose of a stratigraphic test well is to obtain information on the characteristics of the zones through which the well is drilled, including most specifically, the proposed injection zone and confining zone(s). The rules in Subchapter B relate to requirements for Class VI injection wells, not the logging, coring, and pressure testing of stratigraphic test wells.

The Environmental Defense Fund (EDF) commented that it is generally supportive of this rulemaking and offered the following recommendation. Proposed §5.201(i) states that, "If a provision of this subchapter conflicts with any provision or term of a Commission order or permit, the provision of such order or permit controls." This language raises a question of whether the Commission orders and permits in conflict with the rules satisfy minimum federal requirements. EDF recommended that the Commission add language to §5.201(i) to clarify that Commission orders and permits in conflict with the subchapter will control "provided that the provision satisfies EPA's minimum requirements for Class VI programs." EDF commented that this change is necessary for Texas to meet EPA requirements and is consistent with the intent of the rulemaking.

The Commission agrees with this comment and adopts §5.201(i) with the recommended change.

§5.202

The Texas-based Organizations recommended that §5.202(e)(2) be revised to require that the fact sheet include a description of the Commission's Environmental Justice analysis considering the presence of existing environmental hazards, cumulative impacts, potential exposure pathways, and susceptible sub-populations, as well as the likely distribution of any environmental and public health benefits from the proposed Class VI project in affected communities. The Organizations recommended that the director identify in the fact sheet whether the project at the proposed location may create any new risks or exacerbate any existing impacts on lower income people and communities of color, and list actions that the facility will be required to take to mitigate existing risks and potential new risks.

The Commission did not propose amendments to §5.202; therefore, this comment is beyond the scope of this rulemaking. Although the Commission did not make changes in response to these comments, the Commission will consider these comments in developing the Memorandum of Agreement with EPA and during program implementation.

§5.203

TCC and TXOGA expressed support for the numerous revisions to the permit application provisions in §5.203 to incorporate additional consistency with the federal regulations for Class VI permit applications. TCC and TXOGA appreciate the coordination between EPA and the Commission to create a robust regulatory scheme.

The Commission appreciates these comments.

The Texas-based Organizations recommended that the Commission revise the rule to include a process that defines how users of an underground source of drinking water will be notified if the USDW has potentially been contaminated.

The Commission declines to make the requested change because Texas already has such a procedure in place. The Texas Water Code requires that the Railroad Commission report to the Texas Commission on Environmental Quality (TCEQ) all documented groundwater contamination. The Water Code defines contamination of groundwater as "the detrimental alteration of the naturally occurring physical, thermal, chemical, or biological quality of groundwater." Effective September 1, 2003, the Water Code also requires the TCEQ to send notification of documented groundwater contamination to the owner of a private drinking water well that may be affected by the contamination and to each applicable groundwater conservation district. Rule §601.10, Form and Content of Groundwater Contamination No-

tice, as adopted by the Texas Groundwater Protection Committee (TGPC), details the information required in the notice. The TCEQ must send the notice within 30 days of the date they receive knowledge of the documented groundwater contamination case.

The Texas-based Organizations recommended that the Commission revise §5.203(b) to require that the surface map and information include maps and tables of all census block groups that intersect the area of review showing the number and percentage of lower-income people, communities of color, susceptible sub-populations, and environmental and social stressors. The Organizations further recommended that the Commission revise §5.203(j), relating to Plan for monitoring, sampling, and testing after initiation of operation, to require that the plan for monitoring, sampling, and testing after initiation of operation require operators to submit revised maps and tables every five years of all census block groups that intersect the AOR, showing the number and percentage of lower-income people, communities of color, susceptible sub-populations; and environmental and social stressors. The Organizations further recommended that the Commission require that the plan include mitigation measures the operator will take if it creates any new risks or exacerbates any existing impacts on lower-income people and communities of color.

The proposed amendments in this rulemaking are very limited and the Commission did not propose to amend §5.203(b). Therefore, the comment is beyond the scope of this rulemaking. Although the Commission did not make changes in response to these comments, the Commission will consider these comments in developing the Memorandum of Agreement with EPA and during program implementation.

Mr. Patrick A. Nye and Mr. Payton Campbell requested an explanation of the modeling of the area of review, the carbon dioxide plume, and the pressure front and whether the rules for modeling will be standardized or if the Commission rely on the information provided by the operator.

The Commission points the commenters to §5.203(d)(1)(A), which describes the requirements for modeling of the area of review. The applicant must use computational modeling that considers the volumes and/or mass and the physical and chemical properties of the injected CO_2 stream, the physical properties of the formation into which the CO_2 stream is to be injected, and available data including data available from logging, testing, or operation of wells. The applicant must predict the lateral and vertical extent of migration for the CO_2 plume and formation fluids and the pressure differentials required to cause movement of injected fluids or formation fluids into a USDW in the subsurface. The model must: be based on geologic and reservoir engineering information collected to characterize the injection zone and the confining zone; be based on anticipated operating data, including injection pressures, rates, temperatures, and total volumes and/or mass over the proposed duration of injection; take into account relevant geologic heterogeneities and data quality and their possible impact on model predictions; consider the physical and chemical properties of injected and formation fluids; and consider potential migration through known faults, fractures, and artificial penetrations and beyond lateral spill points. The Commission will carefully and fully review the models used by the applicants and the data that the applicant inputs into the model.

Mr. Patrick A. Nye and Mr. Payton Campbell asked whether stratigraphic test wells within the area of review will be required to have the same casing requirements as an injection well. They also asked for clarification regarding what happens if the carbon dioxide plume encounters the test well and degradation to the cement and casing occurs. Mr. Nye recommended more requirements for casing and cement in a stratigraphic test well.

The Commission notes that §5.203(d)(1)(B) requires the applicant to identify, compile, and submit a table listing all penetrations, including active, inactive, plugged, and unplugged wells and underground mines in the AOR that may penetrate the confining zone, that are known or reasonably discoverable through specialized knowledge or experience. The applicant must provide a description of each penetration's type, construction, date drilled or excavated, location, depth, and record of plugging and/or completion or closure. Section 5.203(d)(1)(C) requires that the applicant demonstrate whether each of the wells on the table of penetrations has or has not been plugged and whether each of the underground mines (if any) on the table of penetrations has or has not been closed in a manner that prevents the movement of injected fluids or displaced formation fluids that may endanger USDWs or allow the injected fluids or formation fluids to escape the permitted injection zone. The demonstration must include evidence that the materials used are compatible with the carbon dioxide stream. The applicant must perform corrective action on all wells in the AOR that are determined to need corrective action. The operator must perform corrective action using materials suitable for use with the CO_2 stream. The Commission makes no changes in response to these comments.

With respect to §5.203(d)(2)(B), Mr. Patrick A. Nye and Mr. Payton Campbell commented that the AOR should be reviewed on a more frequent basis if the limits of the area of review are exceeded, the records indicate noncompliance and/or corrective action is needed until compliance is achieved and AOR model determined to be stable.

The Commission declines to make the requested change. Consistent with the federal requirements, §5.203(d)(2)(B) requires the applicant to provide a description of the minimum fixed frequency, not to exceed five years, at which the applicant proposes to re-evaluate the area of review (AOR) during the life of the geologic storage facility, how monitoring and operational data will be used to re-evaluate the AOR, and the monitoring and operational conditions that would warrant a re-evaluation of the AOR prior to the next scheduled re-evaluation. Also consistent with the federal requirements, §5.206(g) requires that all Class VI permits include conditions that require that, at the frequency specified in the approved AOR and corrective action plan or permit, and whenever warranted by a material change in the monitoring and/or operational data or in the evaluation of the monitoring and operational data by the operator, but no less frequently than every five years, the operator of a geologic storage facility also must perform a re-evaluation of the AOR. The Commission will require more frequent re-evaluation of the AOR as necessary based on monitoring and operational data.

Ms. Cyndi L. Valdes recommended that the Commission require that the AOR be evaluated if there is a change in injection pressure, well integrity, or evidence of plume exceeding AOR modeling limits.

The Commission declines to make the requested change. Section 5.203(d)(2)(B) requires that the applicant include in the area of review and corrective action plan a description of the minimum fixed frequency, not to exceed five years, at which the applicant proposes to re-evaluate the area of review during the

life of the geologic storage facility; how monitoring and operational data will be used to re-evaluate the area of review; and the monitoring and operational conditions that would warrant a re-evaluation of the area of review prior to the next scheduled re-evaluation. Section 5.206(g) states that the frequency specified in the approved AOR and corrective action plan or permit, and whenever warranted by a material change in the monitoring and/or operational data or in the evaluation of the monitoring and operational data by the operator, but no less frequently than every five years, the operator of a geologic storage facility also must perform a re-evaluation of the AOR. An increase in injection pressure could, and evidence of the plume and pressure front exceeding the modeled boundary of the area of review would, result in a requirement that the permittee reevaluate the area of review.

The Texas-based Organizations expressed support for the amendment to §5.203(d)(2)(B)(i) adding a maximum number of years at which the applicant may propose to re-evaluate the area of review and asked whether the director will have the authority to require a shorter time frame than five years for re-evaluation.

The Commission notes that the director has the authority to require reevaluation of the area of review more frequently than every five years. Section 5.206(g) requires the permittee to perform a re-evaluation of the AOR at the frequency specified in the approved AOR and corrective action plan or permit, and whenever warranted by a material change in the monitoring and/or operational data or in the evaluation of the monitoring and operational data by the operator, but no less frequently than every five years.

Mr. Van Voorhees expressed support for the amendments to §5.203(f) because they clarify that it should not matter whether the operator submits the plan before or after the Commission has granted authority to drill a well. Mr. VanVoorhees recommended that the Commission revise the language in the preamble because it is incorrect.

The Commission appreciates this comment. Section §5.203(f) concerns a plan for logging, sampling, and testing of injection wells before injection. There are two separate authorizations associated with Class VI wells: (1) authorization to drill the injection well and perform logging, sampling and testing; and (2) authorization to inject. The plan detailing how the applicant proposes to log, sample, and test the injection well must be submitted to the Commission with the application, but the actual logging, sampling, and testing of injection well is performed according to the plan after the well has been drilled and completed, but before the Commission issues a permit to inject. With respect to the comment regarding revising the preamble, the Commission does not adopt the preamble language and so no change is necessary.

Mr. Patrick A. Nye and Mr. Payton Campbell expressed confusion with allowing the director to require further cores when once the injection well is cased then cores cannot be taken. Typically log analysis, core analysis, and formation fluid sample information is taken from an open hole and casing the well occurs immediately after.

The Commission agrees that cores must be taken before a well is cased. However, §5.203(f)(3)(B) requires the operator to take whole cores or sidewall cores representative of the injection zone and confining zone. The director may also require the operator to core formations in the borehole other than the injection zone and the confining zone. To eliminate confusion, the Commission adopts §5.203(f)(3)(B) with a change to relocate the applicable provision.

Ms. Cyndi L. Valdes recommended that the coring and logging data should be from the injection well only, not other wells.

The Commission declines to make the requested change. Section 5.203(f)(3)(B) clarifies that the operator must take whole cores or sidewall cores representative of the injection zone and confining zone and for fluid samples from the injection zone. The section further states that the director may accept data from cores and formation fluid samples from nearby wells or other data if the operator can demonstrate to the director that such data are representative of conditions at the proposed injection well. The Commission will review any such data from other wells to ensure that the data is representative of conditions at the proposed injection well. This language is consistent with the federal regulations.

The Texas-based Organizations recommended that the Commission revise §5.203(i) to require that the operating plan include measures the operator will take to prevent creating any new risks or exacerbating any existing impacts on lower-income people and communities of color, based on an evaluation that considered the presence of existing environmental hazards, cumulative impacts, potential exposure pathways, and susceptible sub-populations. The Organizations stated that this language is consistent with EPA's Memorandum of Agreement with Louisiana in the section "Considering Environmental Justice & Civil Rights Impacts on Communities."

The Commission declines to make the recommended change. The proposed amendments in this latest rulemaking are very limited and the Commission did not propose to amend §5.203(i). Therefore, the comment is beyond the scope of this rulemaking. Although the Commission did not make changes in response to these comments, the Commission will consider these comments in developing the Memorandum of Agreement with EPA and during program implementation.

Mr. Patrick A. Nye and Mr. Payton Campbell asked whether the facility supplying the carbon dioxide will be allowed to vent the carbon dioxide in the event of an injection well shutdown. They also asked when EPA would step in to address the unrestricted flow of carbon dioxide into the atmosphere.

This comment concerns the facility at which the carbon dioxide is captured, which is beyond the scope of this rulemaking and not within the Commission's jurisdiction.

Mr. Patrick A. Nye and Mr. Payton Campbell asked whether, in the event of non-compliance for wellbore integrity, the Commission will require more frequent testing until the issue is resolved.

The Commission directs the commenters to §5.203(h), which establishes the criteria for the mechanical integrity testing plan, and requires that, other than during periods of well workover in which the sealed tubing-casing annulus is of necessity disassembled for maintenance or corrective procedures, the operator maintain mechanical integrity of the injection well at all times. The operator must either repair and successfully retest or plug a well that fails a mechanical integrity test (§5.203(h)(1)(F)). In addition, following the initial annulus pressure test, the operator must continuously monitor injection pressure, rate, temperature, injected volumes and mass, and pressure on the annulus between tubing and long string casing to confirm that the injected fluids are confined to the injection zone (§5.203(h)(1)(C)).

Mr. Patrick A. Nye and Mr. Payton Campbell asked whether the Commission will require the Bureau of Economic Geology recommended 1000 feet of shale seal above the injection zone.

The Commission contacted the Gulf Coast Carbon Center at the Bureau of Economic Geology and was advised that they do not have a recommended thickness for the confining zone(s) above the injection zone. Section 5.102(13) defines "confining zone" as a geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone or zones that acts as barrier to fluid movement. The thickness of the confining zone(s) will be evaluated to determine its effectiveness. The Commission is not aware of any recommended minimum thickness for confining zones and makes no changes in response to this comment.

Mr. Patrick A. Nye and Mr. Payton Campbell requested clarification as to whether 3-D seismic will be required to limit breaching of transmissive faults.

The Commission notes that §5.203 requires an applicant to submit a descriptive report prepared by a knowledgeable person that includes an interpretation of the results of appropriate logs, surveys, sampling, and testing sufficient to determine the depth, thickness, porosity, permeability, and lithology of, and the geochemistry of any formation fluids in, all relevant geologic formations. The applicant must submit information on the geologic structure and reservoir properties of the proposed storage reservoir and overlying formations, including: (1) geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the area from the ground surface to the base of the injection zone within the AOR that indicate the general vertical and lateral limits of all USDWs within the AOR, their positions relative to the storage reservoir and the direction of water movement, where known; (2) the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of, and the geochemistry of any formation fluids in, the storage reservoir and confining zone and any other relevant geologic formations, including geology/facies changes based on field data, which may include geologic cores, outcrop data, seismic surveys, well logs, and lithologic descriptions, and the analyses of logging, sampling, and testing results used to make such determinations; (3) the location, orientation, and properties of known or suspected transmissive faults or fractures that may transect the confining zone within the AOR and a determination that such faults or fractures would not compromise containment; (4) the seismic history, including the presence and depth of seismic sources, and a determination that the seismicity would not compromise containment; and (5) geomechanical information on fractures, stress, ductility, rock strength, and in situ fluid pressures within the confining zone.

The Texas-based Organizations expressed agreement with the amendments to §5.203(j)(2)(C) requiring more frequent corrosion monitoring for the plan for monitoring, sampling, and testing after initiation of operation. The Organizations requested clarification as to whether the Commission staff will read the semi-annual reports to ensure that the facility remains in compliance and to identify any potential signs of risk for underground sources of drinking water.

The Commission plans to carefully review all required data and reports to ensure that the permittee remains in compliance with the requirements of Subchapter B and the permit conditions to identify any potential issues relating to the protection of underground sources of drinking water. The Commission makes no changes in response to this comment.

The Texas-based Organizations expressed appreciation for the clarification in many sections related to well plugging and financial assurance requirements. Regarding §5.203(k), the Organizations stated that the Texas General Land Office previously commented that the Commission should "require cement plugging for abandonment to be from bottomhole to surface consistent with Texas Class I practice." The Commission declined to do so. The Organizations stated that they are aware of several recent cases where recently plugged oil and gas wells have failed. The Organizations, Mr. Brian Hillman, Ms. Malinda Huffman, Mr. Francisco Martinez, Ms. Leslie Meyer and Ms. Meg Davis recommended that the Commission require cement plugging from the bottomhole to surface.

The Commission declines to make this change. The Commission did not propose amendments to the sections regarding well plugging; therefore, this comment is beyond the scope of this rulemaking. As stated by the commenters, a similar comment was made to the amendments proposed in 2022 and the Commission responded that neither the federal Class VI regulations nor the TCEQ Class I regulations at 30 TAC §331.46 (relating to Closure Standards) require plugging with cement from bottomhole to the surface. TCEQ regulations at 30 TAC §331.46(e) state that a well shall be plugged in a manner which will not allow the movement of fluids through the well, out of the injection zone either into or between USDWs or to the land surface. The Commission's rules in Chapter 5 require an applicant to provide a plugging plan with the application, which will be reviewed by Commission staff for adequacy. Staff will consider factors similar to those considered by the TCEQ for Class I injection wells. These factors include, but are not limited to, the type and number of plugs to be used; the placement of each plug including the elevation of the top and bottom; the type, grade, and quantity of plugging material to be used; the method of placement of the plugs; and the procedure used to plug and abandon the well.

With respect to §5.206(k)(6)(A), the Texas-based Organizations, Mr. Brian Hillman, Ms. Malinda Huffman, Mr. Francisco Martinez, Ms. Leslie Meyer and Ms. Meg Davis commented that, while the Commission require latitude and longitude coordinates of the injection well to be depicted on a survey plat, the Commission should also require that the coordinate system (i.e. NAD 27, NAD 83, or WGS 84) be clearly noted on the plat map, rather than simply used. The Organizations also recommended that the Commission require that the coordinates for the facility and any other wells or relevant features located within and around the AOR be provided in a table, indicating the coordinate system used, and the source of the coordinates noted (e.g. RRC database, physical on-site inspection, supervised mapping using satellite imagery, etc.). The Organizations recommended that the Commission amend §5.203(b) to require the applicant to provide a table of latitude and longitude coordinates of all locations they are required to show within the area of review (AOR) under subsection (b), and specify the coordinate system used.

The Commission agrees that geographic coordinates would be useful and adopts §5.203(b)(1) with changes. The Commission also adopts §5.203(k) with a change to correct an error.

The Texas-based Organizations, Mr. Brian Hillman, Ms. Malinda Huffman, Mr. Francisco Martinez, Ms. Leslie Meyer, and Ms. Meg Davis recommended that the Commission require that wells be plugged after a specific number of years of inactivity rather than the current vague incentives to plug.

The Commission declines to make the requested change. Section 5.203(k) requires that an applicant submit to the Commis-

sion with the Class VI permit application a well plugging plan, which must be approved by the Commission. Section 5.206(j) requires that the Commission include in any permit issued under Subchapter B conditions that the operator of a geologic storage facility maintain and comply with the approved well plugging plan. Section 5.206(k)(5) requires that the Commission include in any permit issued under Subchapter B a condition that states that after the director has authorized storage facility closure, the operator must plug all wells in accordance with the approved plan. The Commission will require that the well plugging plan includes reasonable deadlines for plugging of wells. In addition, §5.205(c)(2)(H)(i)(I) requires that the operator maintain financial responsibility until the director approves closure.

The Texas-based Organizations, Mr. Brian Hillman, Ms. Malinda Huffman, Mr. Francisco Martinez, Ms. Leslie Meyer, and Ms. Meg Davis commented that the post-injection storage facility care (PISC) monitoring period is vague and no minimum time period is defined. These commenters expressed concern that the Commission will allow operators to stop monitoring their facilities, even as new drilling, production, and injection activity is taking place throughout the area of review and recommended that the Commission consider how the facility's surroundings will change over long periods of time and the ways that underground sources of drinking water will be impacted. These commenters stated that it is not safe to assume that a Class VI well drilled today will always perform the way today's subsurface models predicted it would. Additionally, the commenters noted the Commission has admitted that it does not have the authority to deny drilling permits within the AOR of a Class VI well, and merely requires coordination between the operators drilling an oil or gas well and an operator of a geologic storage facility. The Organizations requested clarification as to how the Commission will ensure that operators requesting oil and gas well drilling permits within a geologic storage facility AOR have conducted meaningful coordination.

The Commission makes no changes in response to these comments. The federal regulations include a default 50-year post injection monitoring period but allow an operator to demonstrate an alternative post injection timeframe. The Commission did not adopt the default 50-year post-injection monitoring period; instead, the Commission adopted the requirement that the operator demonstrate an alternative post-injection storage facility care timeframe. The requirements for this demonstration can be found in §5.203(m). This subsection requires that the applicant submit a demonstration containing substantial evidence that the geologic storage project will no longer pose a risk of endangerment to USDWs at the end of the post-injection storage facility care timeframe. The demonstration must show the pressure differential between pre-injection and predicted post-injection pressures in the injection zone and the predicted position of the CO_2 plume and associated pressure front at closure as demonstrated in the AOR evaluation. The demonstration must also consider and document the predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any underground sources of drinking water, and/or the timeframe for pressure decline to pre-injection pressures; the predicted rate of CO_2 plume migration within the injection zone, and the predicted timeframe for the stabilization of the CO_2 plume and associated pressure front; a description of the site-specific processes that will result in CO_2 trapping including immobilization by capillary trapping, dissolution, and mineralization at the site; the predicted rate of CO_2 trapping in the immobile capillary phase, dissolved phase, and/or mineral phase; a characterization of the confining zone(s) including a demonstration that it is free of transmissive faults, fractures, and micro-fractures and of appropriate thickness, permeability, and integrity to impede fluid (e.g., CO_2, formation fluids) movement; the presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic storage project or any other projects in proximity to the predicted/modeled, final extent of the CO_2 plume and area of elevated pressure; a description of the well construction and an assessment of the quality of plugs of all abandoned wells within the AOR; the distance between the injection zone and the nearest USDWs above and/or below the injection zone; and any additional site-specific factors required by the director.

§5.204

TCC expressed support for the Commission's revisions to §5.204, which TCC believes provide increased specificity and transparency.

The Commission appreciates this comment.

The Texas-based Organizations recommended that the Commission revise §5.204(a), relating to Notice requirements, to require that the content of notices the applicant provides include a statement that "interested and affected persons may protest the application." The Texas-based Organizations requested clarification as to whether protests may be made by both interested persons and affected persons.

The Commission notes that under §5.204(a), the Commission is the entity that provides the notice of draft permits. The Commission defines "affected person" in §5.102(1) as a person who, as a result of activity sought to be permitted has suffered or may suffer actual injury or economic damage other than as a member of the general public and defines "interested person" in §5.102(32) as any person who expresses an interest in an application, permit, or Class VI UIC well. Affected persons may protest an application. Under §5.204(b)(1)(A), any interested person may submit written comments on the draft permit during the public comment period and may request a hearing if one has not already been scheduled. Under §5.204(b)(2)(B), the director must hold a public hearing whenever the director finds, on the basis of requests, a significant degree of public interest in a draft permit. In addition, under §5.204(b)(2)(C), the director may also hold a public hearing at the director's discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. However, the Commission agrees that clarification would be helpful and has revised §5.204(a)(4)(E) to clarify that the notice must include a statement that interested persons may request a hearing on the application.

Mr. Van Voorhees recommended that the Commission substitute "EPA" for "Environmental Protection Agency" in §5.204(a)(3)(A)(ii) since the Commission has defined "EPA" in §5.102(20).

The Commission agrees with this comment and has made the recommended change.

Ms. Lana Straub commented that, in §5.204(a)(3)(A)(iv), instead of "outermost boundary" it should be changed to read "entire boundary of the proposed geologic storage facility."

The Commission disagrees. Section 5.204(a)(3)(A)(iv) requires notice to each mineral interest owner adjoining the modeled boundary of the proposed geologic storage facility. Section 5.204(a)(3)(A)(v) requires notice to each leaseholder and in-

terest owner of minerals lying above or below the proposed geologic storage facility, meaning within the boundary of the geologic storage facility. The Commission made no change in response to this comment.

Ms. Straub also commented regarding notice requirements in §5.204(a)(3)(A)(iv)-(vi). She suggested that "all mineral interest owners, including non-participating interest owners, working interest owners, and overriding interest owners" should be listed as a party to be notified.

The Commission declines to make the requested change. The proposed amendments in this rulemaking are very limited and the Commission did not propose to amend §5.204(a)(3)(A)(iv)-(vi). Therefore, the comment is beyond the scope of this rulemaking. However, the Commission believes that notice is adequate because §5.204(a)(3)(A)(iv) - (vi) requires that the Commission give notice of a draft permit or a public hearing to each adjoining mineral interest owner, other than the applicant, of the outermost boundary of the proposed geologic storage facility; each leaseholder and interest owner of minerals lying above or below the proposed geologic storage facility; and each adjoining leaseholder of minerals offsetting the outermost boundary of the proposed geologic storage facility, along with the required publication.

The Texas-based Organizations recommended that the Commission revise §5.204(a)(4) to require that the content of notices allow for protests to applications to be emailed. Owning a printer in the home is less common than it used to be, and is less likely for low-income individuals. Mailing a letter of protest requires extra steps that may waste time for many people, especially those who live in rural areas or who do not have easy access to the post office or a printer. Additionally, post offices tend to be closed outside of normal working hours, reducing the opportunity for working people to access stamps needed to mail a letter.

The Commission declines to make the requested change because §5.204(a)(4) does not prohibit submission of protests via electronic mail.

Commission Shift requested that the Commission extend the rulemaking process to hold public hearings throughout the state of Texas in disadvantaged communities, at times when the public can attend, and in locations that are easy to access by public transportation. Commission Shift requested that these hearings discuss potential approaches to ensure that disadvantaged communities have an opportunity to meaningfully participate in permit application proceedings and that the meetings include two-way dialogue between community members and the agency.

Commission Shift also commented that environmental justice is not defined in the current draft of the rule, but operators will be expected to conduct additional outreach to environmental communities that are within a proposed facility's area of review. Commission Shift and the Texas-based Organizations recommended that the Commission include rule language that incorporates environmental justice language included in the Memorandum of Agreement between EPA and the State of Louisiana for the Class VI program. These commenters recommended that the language be specific, respond to the needs of the environmental justice communities, and consider demographic factors as they impact the ease with which these communities are able to engage.

Mr. Brian Hillman, Ms. Malinda Huffman, Mr. Francisco Martinez, Ms. Leslie Meyers, Ms. Meg Davis, and the Texas-based Organizations commented that there are several opportunities for the Commission to incorporate meaningful provisions throughout the Chapter 5 rules other than simply requiring notice to certain communities. Addressing the legacy of environmental racism and the cumulative impacts of industrial development on susceptible communities means that the Commission must require operators to plan and take actions to prevent and mitigate risks posed to these communities throughout the permit application process and during operation. These mitigation actions should be considered by the Commission before a permit is approved.

The Texas-based Organizations recommended that the Commission incorporate robust and ongoing opportunities for public participation, especially for lower-income people, communities of color and those experiencing a disproportionate burden of pollution and environmental hazards. The comment recommended that the Commission provide ample notice of proposed Class VI wells and tailor public participation to specific community needs and interests. Commission Shift commented that those living in rural areas of Texas do not have access to unlimited high-speed internet and that most people do not understand the jargon in the applications and cannot afford an attorney to help them engage successfully in a protest. Tailored public participation activities may include scheduling public meetings at times convenient for residents with appropriate translation services where needed, enabling face-to-face or written feedback on permit applications early in the review process, convening local stakeholders and community groups for safety planning, or supporting the development of community benefits agreements.

The Texas-based Organizations also recommended that the Commission include in §5.204(a) information about how to access language accommodation related to the notice in all languages that are known to be spoken in the counties related to the area of review. The Texas-based Organizations requested that the Commission require that mailed notice be sent in other relevant languages for the location, and not merely "published." The Texas-based Organizations recommended that the Commission require that applicants for Class VI permits provide written translation services upon request, not only verbal interpretation services. The Organizations also requested clarification as to whether the applicant will be responsible for coordinating and paying for translation and interpretation related to the permit application and any documents associated with a hearing. Further, the Texas-based Organizations asked that the Commission require that qualified interpreters who are familiar with the relevant technical jargon be used to provide interpretation and translation.

The Commission declines to make these recommended changes. The proposed amendments in this rulemaking are very limited and the Commission did not propose to amend the language that is the subject of these comments. Therefore, the comments are beyond the scope of this rulemaking. The federal process for granting primacy requires that EPA hold a public hearing on EPA's determination regarding state primacy. This hearing will provide the public with an opportunity to provide comment on the entirety of the Commission's regulations and implementation plans. Although the Commission did not make changes in response to these comments, the Commission will consider these comments in developing the Memorandum of Agreement with EPA and during program implementation.

Mr. McCown urged the Commission to provide directions for making a comment in Spanish, and to make the proposed rule amendments available in Spanish.

The Commission plans to make a summary of rules available in Spanish in the near future.

The Texas-based Organizations recommended that the Commission revise the language in §5.204(a)(6), relating to Notice to certain communities, to read as follows: "The applicant shall identify whether any portions of the AOR encompass an Environmental Justice (EJ) or Limited English-Speaking Household community populations that are lower income, communities of color, households with non-English language needs, or other susceptible subpopulations identified using the EPA's EJSCREEN most recent U.S. Census Bureau American Community Survey data or other tools including but not limited to those recommended in the most up-to-date versions of EPA-published environmental justice guidance documents. If the AOR includes populations that are lower income, communities of color, households with language access needs, or other susceptible subpopulations an EJ or Limited English-Speaking Household community, the applicant shall conduct enhanced public outreach activities to these communities." The Texas-based Organizations also recommended that the Commission require that EPA's EJSCREEN be used to identify environmental and social stressors in specific communities, as well as to allow other tools to be used to calculate impacts to communities, including but not limited to the most up-to-date versions of EPA-published EJ guidance documents.

The Commission declines to make the requested changes. As mentioned above, the proposed amendments in this rulemaking are limited and the comment is beyond the scope of this rulemaking. EPA's EJ tool is periodically revised and can be referenced in the Memorandum of Agreement as an additional evaluation tool to assist in forming a plan for environmental justice on project sites and during program implementation. Although the Commission does not make changes in response to these comments, the Commission will consider these comments in developing the Memorandum of Agreement with EPA and during program implementation.

The Texas-based Organizations, Mr. Brian Hillman, Ms. Malinda Huffman, Mr. Francisco Martinez, Ms. Leslie Meyer, and Ms. Meg Davis recommended that the Commission consider an alternative metric than "limited English-speaking households" to determine the presence of language accommodation needs in the AOR. The commenters believe the current definition of limited-English speaking households would fail to ensure language accommodation where it is needed, and create situations where children are expected to translate and interpret technical jargon for their households. The Texas-based Organization commented that, in §5.102, relating to Definitions, the Commission defines a limited English-speaking household as "a household in which all members 14 years and older have at least some difficulty with English," adopting a definition used by the U.S. Census Bureau. The Organizations expressed concern that using this definition may fail to capture communities that need interpretation and translation services. For example, in many bilingual families, children under the age of 18 are the only English-speaking members in their household. It is unreasonable to assume that a child would be a sufficient translator for their parents or guardians to be able to understand a Class VI permit application notice. However, using the definition the Commission has chosen, households that have a single member aged 14 or older who can speak English very well may not be counted as a limited English-speaking Census Bureau. Specifically, the 1-year American Community Survey (ACS) data is often incomplete, and data is null in many counties for the 2021 1-year ACS, including Webb County where more than 95% of the population is Hispanic and limited English-speaking households are common. The 5-year ACS data includes more counties and should be considered as the more complete and comprehensive dataset by which an assessment is made.

The Texas-based Organizations also recommended that the Commission adopt Limited English Proficiency (LEP) assessment guidelines aligned with those adopted by the Texas Commission on Environmental Quality (TCEQ). TCEQ has adopted Alternative Language Requirements in Title 30 of the Texas Administrative Code, Chapter 39, Subchapter H, Rule §39.426 for providing notice to LEP communities.

The Commission declines to make the requested changes because they are outside the scope of this rulemaking. The Commission will consider these comments in developing the Memorandum of Agreement with EPA and during program implementation.

Regarding §5.204(b), the Texas-based Organizations requested information as to the number of times an applicant may revise the application if the director determines that the director cannot approve an application as written.

The Commission directs the commenters to §1.201, relating to Time Periods for Processing Applications and Issuing Permits Administratively. Section 1.201 outlines the requirements for supplemental filings for applications. Though §1.201 currently applies only to the permits listed in the rule, the Commission plans to amend §1.201 in the future to include the permits issued under Subchapter B. In the meantime, the director will determine when an applicant has reached its maximum number of revisions such that the application will be denied.

With respect to §5.204(b)(2), the Texas-based Organizations recommended that the Commission require that public hearings be held in the same county where the facility is to be located; at times outside of normal working hours to allow for working people to attend; and online allowing for public comment from interested persons who may be unable to attend in person.

The Commission did not propose revisions to §5.204(b)(2) and, therefore, the comment is beyond the scope of the rulemaking. The Commission will consider these comments in developing the Memorandum of Agreement with EPA and during program implementation. The Commission is able to hold hearings live or virtually, or both.

The Texas-based Organizations asked whether the Commission will provide any financial assistance to protestants from low income communities during the hearing process and asked how the Commission will ensure that low income protestants have a fair opportunity to participate and hire experts to help argue their side in a hearing.

The Commission has no statutory authority to provide financial assistance to protestants.

With respect to §5.204(b)(3), the Texas-based Organizations commented that the rules allow the director to administratively approve an application if it receives no protest on the application. The Organizations requested clarification as to whether the administrative approval includes a critical review of whether the information presented in the application is true and to what extent the Commission will verify that the facility plans and design are in compliance with Commission rules if there are no protests.

The Commission notes that the director may only issue a permit after the director finds that the applicant has satisfied all of the criteria required by §5.206(b), which includes that freshwater will be protected, that the injection of anthropogenic carbon dioxide will not endanger or injure human health and safety, that the applicant has demonstrated financial responsibility and has submitted financial assurance necessary to perform post-injection monitoring and closure of the facility. Each permit application for a geologic storage facility will be reviewed by staff with technical expertise for completeness and technical requirements before a permit or permit denial is issued as described in the Commission's Class VI UIC Program Description, a draft of which is available on the Commission's website.

Regarding the Commission's proposed revisions to §5.204(b)(5), TXOGA commented that the amendments are consistent with 40 CFR §124.17 and provide increased specificity for how the response to comments will be made public. TXOGA expressed support for these revisions and the Commission's commitment to transparency in the permitting process.

The Commission appreciates this comment.

The Texas-based Organizations recommended that the Commission list some of the information that it needs to receive from persons who are protesting the application. For example: name, phone number, address, reason for protesting, and any other information the Commission would need when receiving and recording a protest.

The Commission is the entity that develops and provides the notice of an application and of a public hearing. The Commission will consider these comments when drafting the notices of draft permits and public hearings. The Commission makes no change in response to this comment.

§5.205

TCC and TXOGA expressed support for the proposed amendments to §5.205 with respect to financial assurance requirements. The Texas-based Organizations expressed appreciation of the many helpful additions and clarifications that were made to strengthen financial assurance requirements.

The Commission appreciates these comments.

TXOGA commented that §5.205(c)(2)(A)(i) states that the cost estimate used for site closure should include plugging all wells (e.g., monitoring wells) that may never be drilled. The corresponding EPA regulation only discusses the injection wells when determining the closure cost estimate. TXOGA proposes that the Commission adopt EPA's language or include a mechanism to address the financial assurance associated with these other well types.

Further, TXOGA commented that §5.205(c)(2)(A)(i) contemplates the use of a "written estimate of the highest likely dollar amount necessary" as the basis for financial assurance. This language is more stringent than the federal regulations at 40 CFR §146.85(c), which require "a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection well(s), post-injection site care and site closure, and emergency and remedial response." TXOGA recommended that the Commission defer to EPA language, which ensures sufficient financial assurance for closure and post-closure scenarios and is updated annually.

The Commission agrees and adopts §5.205(c)(2)(A)(i) with a change to address the comment.

TXOGA also commented that under the Commission's proposed regulations, it is unclear when financial assurance must be provided. The Commission's proposal alludes to providing financial assurance both prior to carbon dioxide injection (§5.205(c)(2)(B)) and prior to permit issuance (§5.205(c)(2)(A)(ii)). TXOGA believes the requirement should be prior to carbon dioxide injection only.

The Commission notes that §5.205(c)(2)(B) states that a geologic storage facility shall not receive CO_2 until a bond or letter of credit in an amount approved by the director and meeting the requirements of the subsection as to form and issuer has been filed with and approved by the director. Financial assurance is required before the Commission issues the permit to inject.

Mr. Robert Van Voorhees commented that the Commission's regulations use both "financial responsibility" and "financial assurance," which could potentially lead to some confusion. Mr. Van Voorhees noted that both terms are also used interchangeably in the EPA promulgated Class VI regulations. If the Commission intends these terms to have different meanings, Mr. Van Voorhees requested clarification as to the meanings and requested that the Commission check for consistency in use.

The Commission agrees that the federal rules use the terms "financial responsibility" and "financial assurance" interchangeably. The Commission rules reflect the use of the terms as used in the federal regulations. The Commission made no change in response to this comment.

Mr. Patrick A. Nye and Mr. Payton Campbell requested clarification regarding how additional Commission personnel is justified when a third-party delegate is required to evaluate the financial requirements of the permit.

The Commission makes no changes in response to this comment. Section 5.205(c)(2)(C)(i) states that the cost estimate for closure of the geologic storage facility must be performed for each phase separately and must be based on the costs to the Commission of hiring a third party to perform the required activities. The section does not require the Commission to hire a third party to develop the estimate but, rather, requires that the cost estimate be based on the costs to the Commission to hire a third party to perform the required activities.

TCC and TXOGA commented that the Commission's regulations do not specify the financial assurance instruments that qualify under the regulations as satisfactorily demonstrating financial assurance. EPA regulations at 40 CFR §146.85 list which financial instruments must be used: trust funds; surety bonds; letter of credit; insurance; self-insurance (i.e., Financial Test and Corporate Guarantee); escrow account; and any other instrument(s) satisfactory to the Director. While §5.205(c)(2)(D) states that bonds "and letters of credit filed in satisfaction of the financial assurance requirements for a geologic storage facility must comply with the following standards as to issuer and form," this does not clarify if bonds and letters of credit are the only sufficient instruments to demonstrate financial assurance.

TXOGA does not believe, as has been suggested, that Texas lacks statutory authority to authorize the use of financial assurance mechanisms other than letters of credit and bonds. Chapter 27 of the Texas Water Code grants the Commission ample statutory authority to allow for various forms of financial security

for Class VI injection wells. Such financial assurance forms can include insurance, self-insurance, or escrow as well as bonds and letters of credit. The Commission need only adopt rules enumerating these additional acceptable forms of assurance and setting parameters for their use. This is directly supported by the plain language of Texas Water Code §27.073, Financial Responsibility. Further, TXOGA notes that other agencies have not chosen to limit the forms of financial security that can be used for Class VI injection wells. For instance, EPA's financial assurance rule provides that an "owner or operator shall demonstrate and maintain financial responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee that meets the specifications for the mechanisms and instruments revised as appropriate to cover closure and post-closure care . . ." 40 C.F.R. § 146.73. The Commission must adopt rules consistent with those of EPA. Including insurance and corporate guarantees among the available financial assurance mechanisms would be consistent. Ample statutory authority supports the Commission's ability to promulgate rules that include insurance and corporate guarantees among the suite of financial assurance options for Class VI wells.

TIP endorsed the comments submitted by TXOGA regarding the proposed amendments and urged the Commission to give those comments serious consideration, particularly as they relate to the Commission's existing statutory authority under Chapter 27 of the Texas Water Code to authorize Class VI applicants to employ the full suite of financial assurance mechanisms contemplated in 40 CFR 146.73.

The Commission notes that both EPA's and the Commission's rules require that operators maintain financial assurance for activities related to operating, maintaining, monitoring, and closing geologic storage facilities. The Commission's regulations currently allow surety bonds and letters of credit. In addition to surety bonds and letters of credit, the federal regulations allow for trust funds, insurance, self-insurance (i.e., financial test and corporate guarantee), and escrow accounts. The Commission declines to make the requested change for several reasons. First, the Commission believes a revision to allow additional forms of financial responsibility would be material such that republication of §5.205 would be required to allow public comment. In addition, some financial responsibility mechanisms may involve an acceptable level of financial risk to the state, while others may expose the state to more risk than the regulating agencies deem prudent. The Commission has not evaluated the various potential additional forms of financial responsibility in terms of the nature and extent of the risk to the state.

Mr. Van Voorhees recommended that the Commission revise §5.205(c)(2)(H) to substitute "issues a certificate of closure" for "approves storage facility closure" to eliminate an inconsistency and potential cause of confusion as to when exactly the Commission will release operators from the requirement to maintain financial responsibility and assurance.

The Commission agrees and adopts §5.205(c)(2)(H) with the recommended change.

Mr. Patrick A. Nye and Mr. Payton Campbell asked whether there will be sufficient liability insurance for private or public property damages.

The Commission does not have the authority under Texas law to require insurance for property damage.

§5.206

In §5.206, relating to Permit Standards, TCC and TXOGA expressed support for the proposal requiring that "within 30 days after the completion or conversion of an injection well subject to this subchapter, the operator must file with the division a complete record of the well on Commission Form W-2, Oil Well Potential Test, Completion or Recompletion Report and Log showing the current completion" as opposed to "the appropriate form."

The Commission appreciates these comments.

The Texas-based Organizations recommended that the Commission revise §5.206(b) to include the following in the list of criteria that allows the director to issue a permit: "The siting of a Class VI project at the proposed location does not have the potential to create any new risks or exacerbate any existing impacts on lower-income people and communities of color, based on an evaluation that considered the presence of existing environmental hazards, cumulative impacts, potential exposure pathways, and susceptible sub-populations." This language is consistent with the EPA's MOA with Louisiana in the section "Considering Environmental Justice & Civil Rights Impacts on Communities."

The Commission declines to make the requested change. The proposed amendments in this rulemaking are limited and this comment is beyond the scope of the rulemaking. The Commission will consider these comments in developing the Memorandum of Agreement with EPA and during program implementation.

In §5.206(c)(2), TCC and TXOGA expressed appreciation for the additional specificity and clarity provided in the regulation.

The Commission appreciates these comments.

TCC and TXOGA highlighted a potential drafting error in §5.206(d)(1)(B)(ii). The Commission proposes that prior to approval for the operation of a Class VI injection well, the operator shall submit and the director shall consider "any relevant updates, based on data obtained during logging and testing of the well and the formation as required by §5.203(f) of this title, to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted to satisfy the requirements of clauses (iii), (iv), (v), (vii), and (x) of this subparagraph." This appears to be a drafting mistake, both in the reference to §5.203(f) and the references to the subsections (iii), (iv), (v), (vi), (vii), and (x). Federal regulations at 40 CFR §146.82(c)(2) require consideration of any relevant updates, based on data obtained during logging and testing of the well and the formation as required by paragraphs (c)(3), (4), (6), (7), and (10), or correspondingly for the Commission's regulations §5.206(d)(1)(B)(iii), (iv), (vi), (vii), and (x). To comply with federal regulations, the Commission may have switched the references in this provision, and it appears the Commission may be referring to incorrect subsections in its references. TXOGA encourages the Commission to further review this section and provide clarity on the requirements.

The Commission agrees and adopts §5.206(d)(1)(B)(i) and (ii) with a change to address the comments.

EPA recommended that §5.206(e) and (m) be revised to provide a reference to the plugging and abandonment procedures under 40 CFR §144.52(a)(6) or under Part 146 subpart G as appropriate.

The Commission notes that Part 146 subpart G is applicable to Class I hazardous waste injection wells. Section 144.52(a), relating to Establishing permit conditions, states that permits "for owners or operators of Class VI injection wells shall include

conditions meeting the requirements of subpart H of part 146. Permits for other wells shall contain the following requirements, when applicable." Therefore, §144.52(a)(6) is not applicable to Class VI injection wells. In addition, §144.52(a)(6) references the Regional Administrator, which implies that the paragraph applies to permits issued by EPA. However, the Commission adopts §5.206(e)(5)(B)(ii) and (m)(1)(B) with changes to provide a reference to the plugging and abandonment plan in §5.203(k)(2) for the injection wells.

Mr. Patrick A. Nye recommended that the Commission not strike the language in §5.206(f)(3) which states that the operator must either repair and successfully retest or plug a well that fails a mechanical integrity test.

The Commission agrees with this comment. Section 5.203(h) states that an operator must either repair and successfully retest or plug a well that fails a mechanical integrity test. The Commission adopts §5.206(f) with a change to include this language as recommended.

With respect to §5.206(f)(4), the Texas-based Organizations, Mr. Brian Hillman, Ms. Malinda Huffman, Mr. Francisco Martinez, Ms. Leslie Meyer, and Ms. Meg Davis commented that this new section allows continued operation of a well even if a mechanical integrity test fails, regardless of whether any repair or retest has taken place. This poses a threat to people living nearby or depending on the water supplies in the area. Requiring repair after a well fails mechanical integrity testing is a necessary step in preventing groundwater contamination. Mr. Patrick A. Nye and Mr. Payton Campbell commented that loss of internal mechanical integrity could result in a multitude of issues for the injection well and could increase the risk to groundwater and public safety. Instead of allowing continuing injection at the discretion of the director, these commenters recommended that the Commission assemble a team to determine the risks before continuing injection.

The Commission notes that under 40 CFR §146.8(a) and §5.102(36), an injection well has mechanical integrity if: (1) there is no significant leak in the casing, tubing or packer; and (2) there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore. Consistent with the federal regulations at 40 CFR §144.51(q)(3), the Commission's regulations at §5.206(f)(4) state that the director may allow the operator of a well which lacks mechanical integrity to continue or resume injection if the operator has made a satisfactory demonstration that there is no movement of fluid into or between underground sources of drinking water. However, the Commission adopts §5.206 with a change to clarify that the director may only consider allowing the operator of a well which lacks mechanical integrity to continue or resume injection if the operator has made a satisfactory demonstration that there is no movement of fluid into or between underground sources of drinking water, and the reason for the lack of mechanical integrity is a leak in the casing, tubing, or packer.

Mr. Patrick Nye recommended that the Commission revise §5.206(f)(4) to require at least monthly monitoring of the well, area of review, and movement of the injection fluid.

The Commission declines to make the suggested change. Section 5.206(f)(4) states that the director may allow the operator of a well which lacks internal mechanical integrity to continue or resume injection if the operator has made a satisfactory demonstration that there is no movement of fluid into or between underground sources of drinking water. Section 5.203(h)(1)(C) requires that following an initial annulus pressure test, the operator must continuously monitor injection pressure, rate, temperature, injected volumes and mass, and pressure on the annulus between tubing and long string casing to confirm that the injected fluids are confined to the injection zone.

Mr. Patrick A. Nye and Mr. Payton Campbell requested clarification of required actions if the carbon dioxide plume and/or pressure front extends beyond the area of review and there are unplugged wells in the area and whether penalties would be assessed.

The Commission adopts §5.206(g) with a change to remove repetitive language that may have caused confusion.

EPA commented that there should be an "and" between §5.206(h)(3) and (4) to make it consistent with §146.84, relating to Area of review and corrective action.

The Commission disagrees. The Commission's regulations in §5.206(h)(1) through (4) are the same as the federal regulations in 40 CFR §146.84(e)(1) through (4), but the Commission's regulations add 5.206(h)(5) and place the "and" between paragraphs (4) and (5).

The Texas-based Organizations commented that they believe that many operators may be taking advantage of the Commission's weak oversight structures and may be disregarding failing tests until they are able to conduct a test that somehow passes (§5.203(j)(2)(F)). The Organizations recommended that the Commission consider conducting these tests itself or requiring independent third parties to conduct the tests. In addition, the Organizations recommended that the Commission consider allowing a landowner, or a qualified representative the landowner appoints, to witness the mechanical integrity test.

The Commission disagrees. Section 5.206(i) requires that the Commission include in any permit issued under Subchapter B conditions that require the permittee to provide the division with the opportunity to witness all planned well workovers, stimulation activities, other than stimulation for formation testing, and testing and logging. This subsection further requires that the condition must require the permittee to submit a proposed schedule of such activities to the Commission at least 30 days prior to conducting the first such activity and submit notice at least 48 hours in advance of any actual activity. The Commission plans to witness all such tests.

TCC and TXOGA commented that they support the Commission's proposed change in §5.206(k)(5) because it demonstrates consistency throughout the Commission's regulations.

The Commission appreciates these comments.

Mr. Van Voorhees recommended that the Commission replace the phrase "United States Environmental Protection Agency" with "EPA" in §5.206(k)(6)(A).

The Commission agrees with this comment and adopts §5.206(k)(6)(A) with the recommended change.

EPA commented that the state regulations do not identify the specific types of records to be kept. Mr. Patrick A. Nye and Mr. Payton Campbell requested that the record retention period be 10 years rather than three years, and that the period be extended if there are noncompliance or integrity issues. These commenters also requested clarification on whether the records would be made public.

TXOGA commented that there are conflicting record retention timing requirements within the permit standards (§5.206) and recordkeeping and reporting (§5.207) sections for injected fluids and testing and monitoring data.

The Commission adopts §5.206 with changes to address these comments and to ensure consistency with 40 CFR §144.52(j). The Commission adopts §5.206(m) with a change to require that a permittee retain: all modeling inputs and data used to support area of review reevaluations for 10 years; all data collected for Class VI permit applications throughout the life of the geologic storage project and for 10 years following site closure; data on the nature and composition of all injected fluids until 10 years after site closure; monitoring data for 10 years after it is collected; and well plugging reports, post-injection site care data, including data and information used to develop the demonstration of the alternative post-injection site care timeframe, and the site closure report for 10 years following site closure. The director has authority to require the operator to retain any records required in this subchapter for longer than 10 years after site closure.

The Commission also adopts §5.207(b)(2) with a change to correct an error.

Regarding §5.206(o)(2)(M)(iii), TXOGA recommended that the Commission clarify that entities under common control would not be considered a permit transfer.

The Commission disagrees. The federal requirement in 40 CFR §144.51(l)(3) states that the Commission must include a condition in any Class VI permit that this "permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act." The federal regulations at 40 CFR 144.3 define "person" as "an individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof." The Commission's rule in §5.201(42) defines "person" as a "natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity." The Commission believes that a transfer is required because the entities under common control would still be separate legal entities. The Commission makes no change in response to this comment.

Mr. Payton Campbell recommended that any physical alterations be reported immediately to ensure protection of the public and freshwater supply. Mr. Campbell also asked whether there are penalties for noncompliance. Mr. Patrick A. Nye recommended that the Commission revise §5.206(o)(2)(M)(i) to require a definitive time to report any planned physical alterations or additions to the permitted facility.

The Commission makes no changes in response to these comments. Section 5.206(o)(2)(M)(i) requires that the permittee give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility. This requirement is consistent with the federal regulations in 40 CFR §144.51(l)(1). The Commission has the authority to pursue enforcement action, including penalties, for noncompliance with this permit condition.

Mr. Patrick A. Nye recommended that the Commission revise §5.206(o)(2)(M)(vi) regarding twenty-four hour notice of any noncompliance which may endanger health or the environment to include monetary penalties for non-compliance.

This comment is beyond the scope of this rulemaking. Section 5.208 states that an operator that violates this subchapter may be subject to penalties and remedies specified in the Texas Natural Resources Code, Title 3 Texas Water Code, Chapter 27, and other statutes administered by the Commission. The Commission did not propose amendments to §5.208.

Ms. Straub recommended that in §5.206, the Commission add "the injection and geologic storage shall be confined to its zone of injection."

The Commission does not agree the recommended change is necessary. Under §5.206(b)(5), the director may issue a permit if the applicant demonstrates and the director finds that the reservoir into which the carbon dioxide is injected is suitable for or capable of being made suitable for protecting against the escape or migration of carbon dioxide from the storage reservoir. The conditions of any permit issued under Subchapter B will specify where injection is permitted (including an injection interval and/or zone). Any injection contrary to the permit would not be authorized and such injection would be an enforceable violation. In addition, §5.102(d)(2)(B)(i)(III) states that fluids escaping or are likely to escape from the injection zone may be a cause to terminate a permit during its term or deny a permit renewal application. The Commission makes no change in response to this comment.

§5.207

The Texas-based Organizations expressed appreciation of the additional requirements added to §5.207, relating to Reporting and Record-Keeping.

The Commission appreciates this comment.

TCC and TXOGA commented that the Commission proposes in §5.207(a)(2)(A) that certain reports for specific issues be reported within 24 hours of discovery. The proposed provision also requires that the information be reported in writing within five working days of discovery and that the written submission contain "a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance." TCC and TXOGA commented that federal regulations at 40 CFR §146.91 do not include a similar requirement. TCC and TXOGA believe the written reporting requirement is unduly burdensome and that reporting the issues listed above within 24 hours of discovery should be sufficient for the purposes of notice under the regulation. Both commenters recommended that this condition to report such findings within five working days be removed.

The Commission makes no change in response to these comments because federal regulations at 40 CFR §144.51(l)(6)(ii) require the written submission within 5 days of the time the permittee becomes aware of circumstances. The federal regulations also require that the written submission contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

TCC and TXOGA commented that the Commission is proposing in §5.207(a)(2)(D)(vi) that annual reports must include "other information as required by the permit." They commented that this

requirement is unnecessarily vague and may make compliance with the regulation difficult. TCC and TXOGA recommended that the Commission clearly identify and list any requirement that must be included within an annual report.

The Commission makes no change in response to these comments. The reporting requirements in §5.207(a) are minimum reporting requirements. The Commission may include as a permit condition a requirement that the permittee report certain information that is not otherwise listed in §5.207(a)(2)(D). At this time, the Commission is not certain what that information might include.

Mr. Van Voorhees recommended that the Commission substitute "EPA" for "Environmental Protection Agency" in §5.207(b)(2) since the Commission has defined "EPA" in §5.102(20).

The Commission agrees with this comment and adopts §5.207(b)(2) with the recommended change.

With respect to §5.207(e), Mr. Patrick A. Nye commented that the Commission should require all records to be sent to the Commission and that the records should be made available for public use.

The Commission notes that the rule requires that records be sent to the Commission consistent with federal requirements. These records will be available to the public.

EPA commented that the state regulations must include a requirement to retain data collected to prepare the permit application. Title 40 CFR §146.91(f)(1) requires all data collected for Class VI permit applications to be retained throughout the life of the project and for 10 years following site closure.

The Commission points EPA to §5.207(e)(1), which states, "The operator must retain all data collected under §5.203 of this title for Class VI permit applications throughout the life of the geologic sequestration project and for 10 years following storage facility closure.

TCC expressed concern with the requirement in §5.207(e)(3) to retain all testing and monitoring data collected pursuant to the plans required under §5.203(j) for at least 10 years after the data is collected. TCC noted this requirement is inconsistent with federal regulations, which only require that monitoring data be retained.

The Commission makes no change in response to this comment. Section 5.207(e)(3) corresponds to the federal regulations at §146.92(f)(3), which require that the operator of a Class VI well retain monitoring data pursuant to §146.90(b) through (i) for 10 years after it is collected. Section §146.90(b) through (i), corresponds to §5.203(j)(2) and, although both reference monitoring data, both include testing as well as monitoring data (e.g., external mechanical integrity testing and pressure falloff testing).

TXOGA expressed concern with the Commission's proposal in §5.207(e)(4) that an operator must retain "data and information used to develop the demonstration of the alternative postinjection storage facility care timeframe, and the closure report collected pursuant to the requirements of §5.206(k)(6) and (m) of this title for 10 years following storage facility closure." TXOGA commented that the federal regulations at 40 CFR §146.91(f)(4) require an operator to retain such data and information for 10 years "if appropriate." As "data and information used to develop the demonstration of the alternative post-injection storage facility care timeframe and the closure report collected pursuant to the requirements of §5.206(k)(6) and (m)" may not always be collected for each facility, TXOGA recommended that the Commission require the retention of this information only "if appropriate" for the facility.

The Commission makes no change in response to this comment. The federal regulations include a default 50-year post injection monitoring period but allow an operator to demonstrate an alternative post injection timeframe. The Commission did not adopt the default 50-year post-injection monitoring period; instead, the Commission adopted the requirement that the operator demonstrate an alternative post-injection storage facility care timeframe. Therefore, retention of these records will be required for each facility permitted in Texas.

The remainder of the proposed language is adopted without changes. Those amendments are summarized as follows.

Amendments to §5.102

The Commission amends §5.102(2) regarding the definition of "Anthropogenic carbon dioxide (CO_2)" to reflect that the term includes all carbon dioxide that has been captured from, or would otherwise have been released into, the atmosphere. The adopted change clarifies that the regulations apply to carbon dioxide resulting from direct air capture technologies. A corresponding change is also adopted in the definition of "carbon dioxide (CO_2) stream" in §5.102(7).

The Commission amends the definition of "anthropogenic CO_2 injection well" in §5.102(3) and the definition of "geologic storage" in §5.102(28) to clarify that the regulations apply to the various phases of carbon dioxide (gaseous, liquid, or supercritical) for consistency with the federal Class VI UIC regulations.

The Commission adds new paragraph (20) in §5.102 to define EPA as the United States Environmental Protection Agency.

The Commission amends the definition of "good faith claim" in §5.102(30).

The Commission amends §5.102 to add a new paragraph (47) to define "stratigraphic test well." The Commission also adopts new §5.102(51) to define "UIC" as Underground Injection Control.

Amendments to §5.201

The Commission amends §5.201 to add a new subsection (h) regarding requirements for stratigraphic test wells.

Amendments to §5.203

The Commission adopts amendments in §5.203. First, the Commission amends §5.203(a)(1)(B)(iii) to describe federal signatories to permit applications and required reports should a federal agency submit a Class VI UIC permit application consistent with 40 CFR §144.32(a)(3)(ii).

The Commission amends §5.203(a)(2)(C) to replace the word "relevant" with "required" consistent with the federal requirement at 40 CFR §144.31(e)(6).

The Commission amends §5.203(a)(2) to add new subparagraph (E) to require that the application for a Class VI UIC well indicate whether the geologic storage project is located on Indian lands consistent with the federal requirements. The Commission also amends §5.203(a)(2) to add new subparagraph (F) to require that the application include a list of contacts for those States, Tribes, and Territories any portion of which is identified to be within the area of review (AOR) of the geologic storage project based on the map showing the injection well and the AOR consistent with 40 CFR §146.82(a)(2).

The Commission amends §5.203(b)(2)(A) to require that the applicant show within the AOR on the map the number or name and location of stratigraphic boreholes consistent with 40 CFR §146.82(a)(2).

The Commission amends §5.203(d)(1)(C), which requires the applicant to demonstrate that abandoned wells in the AOR have been plugged in a manner that prevents the movement of carbon dioxide or other fluids that may endanger USDWs. The amendment requires a demonstration that the materials used are compatible with the carbon dioxide stream consistent with 40 CFR §146.84(c)(3).

The Commission amends §5.203(d)(2)(B) to clarify that the AOR must be reevaluated at a fixed frequency not to exceed five years throughout the life of the geologic storage facility consistent with the federal requirements at 40 CFR §§146.84(b)(2)(i) and 146.84(e).

The Commission amends §5.203(e)(1)(B)(v) to clarify that at least one long string casing must extend from the surface to the injection zone and must be cemented by circulating cement to the surface in one or more stages consistent with 40 CFR §146.86(b)(3).

The Commission amends §5.203(e)(2)(D) to require an applicant to provide to the Commission in the application the external pressure, internal pressure, and axial loading consistent with the requirements in 40 CFR §146.86(b)(1)(ii).

The Commission amends §5.203(e)(4) to clarify that the applicant must include a description of the stimulation fluids in its description of the proposed well stimulation program if the well is to be stimulated consistent with 40 CFR §146.82(a)(9).

The Commission amends §5.203(f) to amend the title of the subsection to clarify that the plan for logging, sampling, and testing applies to logging, sampling and testing before injection.

The Commission also amends §5.203(f)(3)(B) to clarify that the operator must take whole cores or sidewall cores representative of the injection zone and confining zone and formation fluid samples from the injection zone and must submit to the director a detailed report prepared by a log analyst. The director may require the operator to core other formations in the borehole. The amendment further clarifies that the director may accept data from cores and formation fluid samples from nearby wells or other data if the operator can demonstrate to the director that such data are representative of conditions at the proposed injection well. The amendments to §5.203(f) are consistent with 40 CFR §146.87(b).

The Commission amends §5.203(j)(2)(C), which relates to the requirement for a plan for monitoring, sampling, and testing after initiation of operation. The amendments state that the plan must include a requirement for the performance of corrosion monitoring of the well materials on a quarterly, rather than semi-annual, basis. The amendments change the reporting requirements such that monitoring results must be reported on a semi-annual, rather than annual, basis consistent with 40 CFR §146.90(c).

The Commission amends §5.203(j)(2) to add new subparagraph (F). The new subparagraph requires that the plan include a demonstration of external mechanical integrity at least once per year until the injection well is plugged, and, if required by the director, a casing inspection log at a frequency established in the testing and monitoring plan consistent with 40 CFR §146.90(e). The Commission redesignates §5.203(j)(2)(F) as §5.203(j)(2)(G) and §5.203(j)(2)(G) as §5.203(j)(2)(H).

The Commission amends §5.203(m)(8)(D) to include examples of existing information (e.g., at Class I, Class II, or Class V experimental technology well sites). This amendment is consistent with the federal requirements at 40 CFR §146.93(c)(2)(iv).

Amendments to §5.204

The Commission amends §5.204 to require that the Commission give notice of a draft permit or a public hearing to any State, Tribe, or Territory any portion of which is within the AOR of the Class VI project consistent with 40 CFR §146.82(b). The Commission redesignates (xi) as (xii) and (xii) as (xiii).

The Commission amends §5.204(b)(5) to clarify that, upon making a final permit decision, the director shall issue a response to comments, which must specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change, and briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. Furthermore, the Commission must post the response to comments on the Commission's internet website. These amendments are consistent with 40 CFR §124.17.

Amendments to §5.205

The Commission amends §5.205(c) to state that the director shall consider and approve the applicant's demonstration of financial responsibility for all the phases of the geologic sequestration project, including the post-injection storage facility care and closure phase and the plugging phase, prior to issuance of a geologic storage injection well permit.

The Commission amends §5.205(c)(2)(A)(i) and (C)(i) for consistency with 40 CFR §146.85(a)(2)(ii).

The Commission amends §5.205(c)(2)(C)(i) to clarify that the amount of financial assurance required to be filed under this subchapter must include plugging, and that the cost estimate must be performed for each phase separately and must be based on the costs to the regulatory agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.

The Commission amends §5.205(c)(2)(D) to add new (iii) to clarify that the qualifying financial responsibility instruments must comprise protective conditions of coverage. In addition, the amendments specify requirements for cancellation or termination of financial instruments, renewal of financial instruments, cancellation notice, and alternate financial responsibility.

The Commission adopts new §5.205(c)(2)(D)(iii)(III) to state that cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect if on or before the date of expiration: the director deems the facility abandoned; the permit is terminated or revoked or a new permit is denied; closure is ordered by the director or a U.S. district court or other court of competent jurisdiction; the operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or the amount due is paid. These amendments are consistent with 40 CFR §146.85(a)(4).

The Commission amends §5.205(c)(2)(E) to require that, during the active life of the geologic storage project, adjustments for inflation be provided to the director.

The Commission amends §5.205(c)(2)(F) to clarify that the director must approve annual written updates of the cost estimate to increase or decrease the cost estimate to account for any changes to the AOR and corrective action plan, the emergency response and remedial action plan, the injection well plugging plan, and the PISC and closure plan. The amendments address revisions to the cost estimate and requirements for decreasing the value of financial assurance. These amendments are consistent with the federal requirements in 40 CFR §146.85(c)(1).

The Commission amends §5.205(c)(2) to add new subparagraph (G) to clarify requirements when the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after written approval from the director. These amendments are consistent with the federal requirements in 40 CFR §146.85(e).

The Commission amends §5.205(c)(2) to add new subparagraph (H) to state that the requirement to maintain adequate financial responsibility is directly enforceable regardless of whether the requirement is a condition of the permit. New subparagraph (H)(i) clarifies the period of time financial responsibility must be maintained. New subparagraph (H)(ii) addresses when an operator may be released from a financial instrument. These amendments are consistent with the requirements at 40 CFR §146.85(b)(2).

The Commission amends §5.205(c) to add new paragraph (5) to clarify that the operator must maintain the required financial responsibility regardless of the status of the director's review of the financial responsibility demonstration consistent with 40 CFR §146.85(a)(5)(ii).

Amendments to §5.206

The Commission amends §5.206(a) to divide the subsection into two paragraphs. New paragraph (2) clarifies that a permit will include a condition that states that the permit may be modified, revoked and reissued, or terminated for cause and that the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. These amendments are consistent with the requirements in 40 CFR §144.51(f).

The Commission amends §5.206(b) to add new paragraph (4) to state that the director may issue a permit under this subchapter if the applicant demonstrates and the director finds that the construction, operation, maintenance, conversion, plugging, abandonment, or any other injection activity does not allow the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. This amendment is consistent with the federal requirements in 40 CFR §144.12(a).

The Commission amends §5.206(c)(2) to clarify that the well completion information must be filed on Commission Form W-2, Oil Well Potential Test, Completion or Recompletion Report and Log. This amendment is consistent with the federal requirements in 40 CFR §146.82(c)(5). The Commission Form W-2, and all other Commission forms, can be found by clicking on the "Forms" tab on the Commission's website.

The Commission amends §5.206(d)(1) to clarify the information that the operator must submit and the director must consider before granting approval for the operation of a Class VI injection well. New subparagraph (A) includes the existing language. New subparagraph (B) clarifies that, prior to approval for the operation of a Class VI injection well, the operator shall submit, and the director shall consider, certain information.

These amendments are consistent with the federal requirements in 40 CFR §146.82(c) and distinguish between the requirements of the initial permit application and the requirements to update any permit application/permit elements prior to granting approval to inject.

The Commission amends §5.206(e) to add new paragraph (5).

The Commission also amends §5.206(f) to revise paragraph (2) add a permit condition that clarifies that the operator must establish mechanical integrity prior to commencing injection. The Commission adds new paragraph (3) to add a permit condition that states that, if the director determines that the injection well lacks mechanical integrity, the director shall give written notice of the director's determination to the operator. Unless the director requires immediate cessation, the operator shall cease injection into the well within 48 hours of receipt of the director's determination. The director may allow plugging of the well pursuant or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The operator may resume injection upon written notification of the director's determination that the operator has demonstrated the well has mechanical integrity.

The Commission adds new paragraph (4) in §5.206(f) to add a permit condition detailing requirements for wells that lack internal mechanical integrity. Existing paragraph (4) is renumbered (5).

These amendments ensure that the rules meet the minimum standards of the federal requirements in 40 CFR §144.51.

The Commission also amends §5.206(g) to clarify that the AOR must be reevaluated at a minimum frequency not to exceed five years as specified in the approved AOR and corrective action plan. In addition, the AOR must be reevaluated whenever warranted by a material change in the monitoring and/or operational data or in the evaluation of the monitoring and operational data by the operator.

The Commission amends §5.206(g)(4) to clarify that any amendments to the AOR and corrective action plan must be approved by the director, must be incorporated into the permit, and are subject to the permit modification requirements in §5.202.

The Commission adds new subsection (g)(5) to require that the operator retain all modeling inputs and data used to support AOR reevaluations for at least 10 years.

The Commission amends §5.206(h)(1) to clarify that the emergency and remedial response plan and the demonstration of financial responsibility must account for the AOR delineated as specified in §5.203(d)(1)(A) - (C) or the most recently evaluated AOR delineated under subsection (g) of §5.206, regardless of whether or not corrective action in the AOR is phased consistent with 40 CFR §146.84(f).

The Commission amends §5.206(h)(3) to clarify that, if any water quality monitoring of an USDW indicates the movement of any contaminant into the USDW, except as authorized by an aquifer

exemption, the director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including plugging of the injection well) as are necessary to prevent such movement. This amendment is consistent with the federal requirements in 40 CFR §144.12(b).

The Commission amends §5.206(k)(5) require the operator to submit a plugging record (Form W-3) as required by §3.14 of this title (relating to Plugging) after the director has authorized storage facility closure and plugged all wells in accordance with the approved plugging plan. This amendment is consistent with the federal requirements in 40 CFR §144.52(a)(7)(i).

The Commission amends §5.206(m) to clarify the records the operator must retain. This amendment is consistent with the federal requirements in 40 CFR §146.91(f).

The Commission amends §5.206(o)(1) to clarify that permits issued under Subchapter B of Chapter 5 shall be issued for the operating life of the facility and the post-injection storage facility care period. The director shall review each permit at least once every five years to determine whether it should be modified, revoked and reissued, or terminated.

The Commission amends §5.206(o)(2) to specify permit conditions such as modification, revocation, and termination; signatory requirements; reporting requirements; non-compliance; incorporating other requirements in permits; and compliance with the SWDA. These amendments are consistent with the federal requirements in 40 CFR §144.52.

Amendments to §5.207

The Commission amends §5.207(a)(2)(A) to require the operator to report certain operating information to the director and the appropriate district office orally as soon as practicable, but within 24 hours of discovery, and in writing within five working days of discovery. The amendments specify the contents of the written submission.

The Commission amends §5.207(a)(2)(A) to add new clause (i), which is existing language revised to delete repetitive language. New clause (ii) would require reporting of any evidence that the injected CO_2 stream or associated pressure front may cause an endangerment to a USDW. New clause (iii) requires reporting of any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs. New clause (iv) requires the reporting of any triggering of a shut-off system (i.e., down-hole or at the surface). New clause (v) requires the reporting of any failure to maintain mechanical integrity. These amendments are consistent with the federal requirements in 40 CFR §146.91(c)(2).

The Commission reorganizes §5.207(a)(2)(D) and adds new (E) to clarify requirements for annual reports and updates.

The Commission amends §5.207(e) to specify requirements for retaining certain data. New §5.207(e)(6) and (7) clarify that the director has authority to require the operator to retain any records required in Subchapter B for longer than 10 years after storage facility closure and to require the operator to submit the records to the director at the conclusion of the retention period. These amendments are consistent with 40 CFR §146.91(f).

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 91, Subchapter R, relating to authorization for multiple or alternative uses of wells; Texas Water Code, Chapter 27, Subchapter C-1, which gives the Commission jurisdiction over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir; Texas Health and Safety Code §382.502, which allows the Commission to adopt by rule standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository and requires the Commission to ensure standards comply with federal requirements issued by the EPA; and Texas Water Code, Chapter 120, which establishes the Anthropogenic Carbon Dioxide Storage Trust Fund, a special interest-bearing fund in the state treasury, to consist of fees collected by the Commission and penalties imposed under Texas Water Code, Chapter 27, Subchapter C-1, and to be used by the Commission for only certain specified activities associated with geologic storage facilities and associated anthropogenic carbon dioxide injection wells.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §5.102

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052; Texas Natural Resources Code, Chapter 91, Subchapter R; Texas Health and Safety Code §382.502; and Texas Water Code, Chapters 27 and 120.

Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91, Texas Health and Safety Code, Chapter 382, and Texas Water Code, Chapters 27 and 120.

§5.102. Definitions.

The following terms, when used in Subchapter B of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected person--A person who, as a result of activity sought to be permitted has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(2) Anthropogenic carbon dioxide (CO_2)--

(A) CO_2 that has been captured from or would otherwise have been released into the atmosphere that has been:

(i) separated from any other fluid stream; or

(ii) captured from an emissions source, including:

(I) an advanced clean energy project as defined by Health and Safety Code, §382.003, or another type of electric generation facility; or

(II) an industrial source of emissions; and

(iii) any incidental associated substance derived from the source material for, or from the process of capturing, CO_2 described by clause (i) of this subparagraph; and

(iv) any substance added to CO_2 described by clause (i) of this subparagraph to enable or improve the process of injecting the CO_2; and

(B) does not include naturally occurring CO_2 that is produced, acquired, recaptured, recycled, and reinjected as part of enhanced recovery operations.

(3) Anthropogenic CO_2 injection well--An injection well used to inject or transmit gaseous, liquid, or supercritical anthropogenic CO_2 into a reservoir.

(4) Aquifer--A geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(5) Area of review (AOR)--The subsurface three-dimensional extent of the CO_2 stream plume and the associated pressure front, as well as the overlying formations, any underground sources of drinking water overlying an injection zone along with any intervening formations, and the surface area above that delineated region.

(6) Carbon dioxide (CO_2) plume--The underground extent, in three dimensions, of an injected CO_2 stream.

(7) Carbon dioxide (CO_2) stream--CO_2 that has been captured from an emission source or the atmosphere, incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. The term does not include any CO_2 stream that meets the definition of a hazardous waste under 40 CFR Part 261.

(8) Casing--A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

(9) Cementing--The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

(10) Class VI well--Any well used to inject anthropogenic CO_2 specifically for the purpose of the long-term containment of a gaseous, liquid, or supercritical CO_2 in subsurface geologic formations.

(11) Code of Federal Regulations (CFR)--The codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

(12) Commission--A quorum of the members of the Railroad Commission of Texas convening as a body in open meeting.

(13) Confining zone--A geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone or zones that acts as barrier to fluid movement. For Class VI wells operating under an injection depth waiver, confining zone means a geologic formation, group of formations, or part of a formation stratigraphically overlying and underlying the injection zone or zones that acts as a barrier to fluid movement.

(14) Corrective action--Methods to assure that wells within the area of review do not serve as conduits for the movement of fluids into or between underground sources of drinking water, including the use of corrosion resistant materials, where appropriate.

(15) Delegate--The person authorized by the director to take action on behalf of the Railroad Commission of Texas under this chapter.

(16) Director--The director of the Oil and Gas Division of the Railroad Commission of Texas or the director's delegate.

(17) Division--The Oil and Gas Division of the Railroad Commission of Texas.

(18) Draft permit--A document prepared indicating the director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a draft permit.

(19) Enhanced recovery operation--Using any process to displace hydrocarbons from a reservoir other than by primary recovery, including using any physical, chemical, thermal, or biological process and any co-production project. This term does not include pressure maintenance or disposal projects.

(20) EPA--The United States Environmental Protection Agency.

(21) Exempted aquifer--An aquifer or its portion that meets the criteria in the definition of underground source of drinking water but which has been exempted according to the procedures in 40 CFR §144.7.

(22) Facility closure--The point at which the operator of a geologic storage facility is released from post-injection storage facility care responsibilities.

(23) Flow rate--The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

(24) Fluid--Any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(25) Formation--A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(26) Formation fluid--Fluid present in a formation under natural conditions.

(27) Fracture pressure--The pressure that, if applied to a subsurface formation, would cause that formation to physically fracture.

(28) Geologic storage--The long-term containment of gaseous, liquid, or supercritical anthropogenic CO_2 in subsurface geologic formations.

(29) Geologic storage facility or storage facility--The underground geologic formation, underground equipment, injection wells, and surface buildings and equipment used or to be used for the geologic storage of anthropogenic CO_2 and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the geologic storage of anthropogenic CO_2. The term includes the subsurface three-dimensional extent of the CO_2 plume, associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region, and any reasonable and necessary areal buffer and subsurface monitoring zones. The term does not include a pipeline used to transport CO_2 from the facility at which the CO_2 is captured to the geologic storage facility. The storage of CO_2 incidental to or as part of enhanced recovery operations does not in itself automatically render a facility a geologic storage facility.

(30) Good faith claim--A factually supported claim based on a recognized legal theory to a continuing possessory right in pore space such that the pore space can be used for geologic storage of carbon dioxide.

(31) Injection zone--A geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive CO_2 through a well or wells associated with a geologic storage facility.

(32) Injection well--A well into which fluids are injected.

(33) Interested person--Any person who expresses an interest in an application, permit, or Class VI UIC well.

(34) Limited English-speaking household--A household in which all members 14 years and older have at least some difficulty with English.

(35) Lithology--The description of rocks on the basis of their physical and chemical characteristics.

(36) Mechanical integrity--

(A) An anthropogenic CO_2 injection well has mechanical integrity if:

(i) there is no significant leak in the casing, tubing, or packer; and

(ii) there is no significant fluid movement into a stratum containing an underground source of drinking water through channels adjacent to the injection well bore as a result of operation of the injection well.

(B) The Commission will consider any deviations during testing that cannot be explained by the margin of error for the test used to determine mechanical integrity, or other factors, such as temperature fluctuations, to be an indication of the possibility of a significant leak and/or the possibility of significant fluid movement into a stratum containing an underground source of drinking water through channels adjacent to the injection wellbore.

(37) Monitoring well--A well either completed or re-completed to observe subsurface phenomena, including the presence of anthropogenic CO_2, pressure fluctuations, fluid levels and flow, temperature, and/or in situ water chemistry.

(38) Offshore--The area in the Gulf of Mexico seaward of the coast that is within three marine leagues of the coast.

(39) Operator--A person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the rules and regulations regarding the permitting, physical operation, closure, and post-closure care of a geologic storage facility, or such person's authorized representative.

(40) Owner--The owner of any facility or activity subject to regulation under the UIC program.

(41) Owner or operator--The owner or operator of any injection well, or any other facility or activity that is subject to regulation under the UIC program. When a geologic storage facility is owned by one person but is operated by another person, it is the operator's duty to comply with the requirements of this subchapter and any permit issued under this subchapter, except that either the owner or the operator may demonstrate financial responsibility.

(42) Packer--A device lowered into a well to produce a fluid-tight seal.

(43) Permit--An authorization, license, or equivalent control document issued by the Commission to implement the requirements of this chapter.

(44) Person--A natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(45) Plugging--The act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

(46) Post-injection facility care--Monitoring and other actions (including corrective action) needed following cessation of injection to assure that underground sources of drinking water are not endangered and that the anthropogenic CO_2 remains confined to the permitted injection interval.

(47) Pressure front--The zone of elevated pressure that is created by the injection of the CO_2 stream into the subsurface where there is a pressure differential sufficient to cause movement of the CO_2 stream or formation fluids from the injection zone into an underground source of drinking water.

(48) Reservoir--A natural or artificially created subsurface stratum, formation, aquifer, cavity, void, or coal seam.

(49) Stratigraphic test well--An exploratory well drilled for the purpose of gathering information in connection with a proposed carbon dioxide geologic storage project, including formation testing to obtain information on the chemical and physical characteristics of the injection zones and confining zones. Such testing may include injectivity testing.

(50) Stratum (or strata)--A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

(51) Surface casing--The first string of well casing to be installed in the well.

(52) Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move beyond the confining zone.

(53) UIC--Underground injection control.

(54) Underground source of drinking water (USDW)--An aquifer or its portion which is not an exempt aquifer as defined in 40 CFR §146.4 and which:

(A) supplies any public water system; or

(B) contains a sufficient quantity of ground water to supply a public water system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 mg/l total dissolved solids.

(55) Well injection--The subsurface emplacement of fluids through a well.

(56) Well stimulation--Any of several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for fluid to move more readily into the formation including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(57) Workover--An operation in which a down-hole component of a well is repaired or the engineering design of the well is changed. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

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

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SUBCHAPTER B. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF ANTHROPOGENIC CARBON DIOXIDE (CO2)

16 TAC §§5.201, 5.203 - 5.207

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 91, Subchapter R, relating to authorization for multiple or alternative uses of wells; Texas Water Code, Chapter 27, Subchapter C-1, which gives the Commission jurisdiction over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir; Texas Health and Safety Code §382.502, which allows the Commission to adopt by rule standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository and requires the Commission to ensure standards comply with federal requirements issued by the EPA; and Texas Water Code, Chapter 120, which establishes the Anthropogenic Carbon Dioxide Storage Trust Fund, a special interest-bearing fund in the state treasury, to consist of fees collected by the Commission and penalties imposed under Texas Water Code, Chapter 27, Subchapter C-1, and to be used by the Commission for only certain specified activities associated with geologic storage facilities and associated anthropogenic carbon dioxide injection wells.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052; Texas Natural Resources Code, Chapter 91, Subchapter R; Texas Health and Safety Code §382.502; and Texas Water Code, Chapters 27 and 120.

Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91, Texas Health and Safety Code, Chapter 382, and Texas Water Code, Chapters 27 and 120.

§5.201. Applicability and Compliance.

(a) Scope of jurisdiction. This subchapter applies to the geologic storage and associated injection of anthropogenic CO_2 in this state, both onshore and offshore.

(b) Injection of CO_2 for enhanced recovery.

(1) This subchapter does not apply to the injection of fluid through the use of an injection well regulated under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) for the primary purpose of enhanced recovery operations from which there is reasonable expectation of more than insignificant future production volumes of oil, gas, or geothermal energy and operating pressures are no higher than reasonably necessary to produce such volumes or rates. However, the operator of an enhanced recovery project may propose to also permit the enhanced recovery project as a CO_2 geologic storage facility simultaneously.

(2) If the director determines that an injection well that is permitted for the injection of CO_2 for the purpose of enhanced recovery regulated under §3.46 of this title should be regulated under this subchapter because the injection well is no longer being used for the primary purpose of enhanced recovery operations or there is an increased risk to USDWs, the director must notify the operator of such determination and allow the operator at least 30 days to respond to the determination and to file an application under this subchapter or cease operation of the well. In determining if there is an increased risk to USDWs, the director shall consider the following factors:

(A) increase in reservoir pressure within the injection zone;

(B) increase in CO_2 injection rates;

(C) decrease in reservoir production rates;

(D) distance between the injection zone and USDWs;

(E) suitability of the enhanced oil or gas recovery AOR delineation;

(F) quality of abandoned well plugs within the AOR;

(G) the storage operator's plan for recovery of CO_2 at the cessation of injection;

(H) the source and properties of injected CO_2; and

(I) any additional site-specific factors as determined by the director.

(3) This subchapter does not preclude an enhanced oil recovery project operator from opting into a regulatory program that provides carbon credit for anthropogenic CO_2 sequestered through the enhanced recovery project.

(c) Injection of acid gas. This subchapter does not apply to the disposal of acid gas generated from oil and gas activities from leases, units, fields, or a gas processing facility. Injection of acid gas that contains CO_2 and that was generated as part of oil and gas processing may continue to be permitted as a Class II injection well. The potential need to transition a well from Class II to Class VI shall be based on the increased risk to USDWs related to significant storage of CO_2 in the reservoir, where the regulatory tools of the Class II program cannot successfully manage the risk. In determining if there is an increased risk to USDWs, the director shall consider the following factors:

(1) the reservoir pressure within the injection zone;

(2) the quantity of acid gas being disposed of;

(3) the distance between the injection zone and USDWs;

(4) the suitability of the disposed waste AOR delineation;

(5) the quality of abandoned well plugs within the AOR;

(6) the source and properties of injected acid gas; and

(7) any additional site-specific factors as determined by the director.

(d) This subchapter applies to a well that is authorized as or converted to an anthropogenic CO_2 injection well for geologic storage (a Class VI injection well). This subchapter applies regardless of whether the well was initially completed for the purpose of injection and geologic storage of anthropogenic CO_2 or was initially completed for another purpose and is converted to the purpose of injection and geologic storage of anthropogenic CO_2, except that the Commission may

not issue a permit under this subchapter for the conversion of a previously plugged and abandoned Class I injection well, including any associated waste plume, to a Class VI injection well.

(e) Expansion of aquifer exemption. The areal extent of an aquifer exemption for a Class II enhanced recovery well may be expanded for the exclusive purpose of Class VI injection for geologic storage if the aquifer does not currently serve as a source of drinking water; and the total dissolved solids content is more than 3,000 milligrams per liter (mg/l) and less than 10,000 mg/l; and it is not reasonably expected to supply a public water system in accordance with 40 CFR §146.4. An operator seeking such an expansion shall submit, concurrent with the permit application, a supplemental report that complies with 40 CFR §144.7(d). The Commission adopts 40 CFR §144.7 and §146.4 by reference, effective September 20, 2022.

(f) Injection depth waiver. An operator may seek a waiver from the Class VI injection depth requirements for geologic storage to allow injection into non-USDW formations while ensuring that USDWs above and below the injection zone are protected from endangerment. An operator seeking a waiver of the requirement to inject below the lowermost USDW shall submit, concurrent with the permit application or a permit amendment application, a supplemental report that complies with 40 CFR §146.95. The Commission adopts 40 CFR §146.95 by reference, effective September 20, 2022.

(g) This subchapter does not apply to the injection of any CO_2 stream that meets the definition of a hazardous waste under 40 CFR Part 261.

(h) An operator shall apply for a permit to drill (Form W-1) prior to drilling a stratigraphic test well, notify the UIC Section of the application, and submit a completion report (Form W-2/G-1) once the well is completed. If the operator plans to convert the stratigraphic test well to a Class VI injection well, the well construction shall meet all of the requirements of this subchapter for a Class VI injection well. Any stratigraphic test well drilled for exploratory purposes only shall be governed by the provisions of Commission rules in Chapter 3 of this title (relating to Oil and Gas Division) applicable to the drilling, safety, casing, abandoning, and plugging of wells. As an alternative to drilling a stratigraphic test well, an operator may obtain data for site characterization from offset wells.

(i) If a provision of this subchapter conflicts with any provision or term of a Commission order or permit, the provision of such order or permit controls provided that the provision satisfies the minimum requirements for EPA's Class VI UIC program.

(j) The operator of a geologic storage facility must comply with the requirements of this subchapter as well as with all other applicable Commission rules and orders, including the requirements of Chapter 8 of this title (relating to Pipeline Safety Regulations) for pipelines and associated facilities.

§5.203. Application Requirements.

(a) General.

(1) Form and filing; signatories; certification.

(A) Form and filing. Each applicant for a permit to construct and operate a geologic storage facility must file an application with the division in Austin on a form prescribed by the Commission. The applicant must file the application and all attachments with the division and with EPA Region 6 in an electronic format approved by EPA. On the same date, the applicant must file one copy with each appropriate district office and one copy with the Executive Director of the Texas Commission on Environmental Quality.

(B) Signatories to permit applications. An applicant must ensure that the application is executed by a party having knowledge of the facts entered on the form and included in the required attachments. All permit applications shall be signed as specified in this subparagraph:

(i) For a corporation, the permit application shall be signed by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) For a partnership or sole proprietorship, the permit application shall be signed by a general partner or the proprietor, respectively.

(iii) For a municipality, State, Federal, or other public agency, the permit application shall be signed by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes the chief executive officer of the agency or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(C) Certification. Any person signing a permit application or permit amendment application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(2) General information.

(A) On the application, the applicant must include the name, mailing address, and location of the facility for which the application is being submitted and the operator's name, address, telephone number, Commission Organization Report number, and ownership of the facility.

(B) When a geologic storage facility is owned by one person but is operated by another person, it is the operator's duty to file an application for a permit.

(C) The application must include a listing of all required permits or construction approvals for the facility received or applied for under federal or state environmental programs;

(D) A person making an application to the director for a permit under this subchapter must submit a copy of the application to the Texas Commission on Environmental Quality (TCEQ) and must submit to the director a letter of determination from TCEQ concluding that drilling and operating an anthropogenic CO_2 injection well for geologic storage or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ. The letter must be submitted to the director before any permit under this subchapter may be issued.

(E) The application must indicate whether the geologic storage project is located on Indian lands.

(F) The application must include a list of contacts for those States, Tribes, and Territories any portion of which is identified to be within the AOR of the geologic storage project based on the map showing the injection well and the AOR.

(3) Application completeness. The Commission shall not issue a permit before receiving a complete application. A permit application is complete when the director determines that the application contains information addressing each application requirement of the regulatory program and all information necessary to initiate the final review by the director.

(4) Reports. An applicant must ensure that all descriptive reports are prepared by a qualified and knowledgeable person and include an interpretation of the results of all logs, surveys, sampling, and tests required in this subchapter. The applicant must include in the application a quality assurance and surveillance plan for all testing and monitoring, which includes, at a minimum, validation of the analytical laboratory data, calibration of field instruments, and an explanation of the sampling and data acquisition techniques.

(5) If otherwise required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscientists Practice Act, respectively, a licensed professional engineer or geoscientist must conduct the geologic and hydrologic evaluations required under this subchapter and must affix the appropriate seal on the resulting reports of such evaluations.

(b) Surface map and information. Only information of public record is required to be included on this map.

(1) The applicant must file with the director a surface map delineating the proposed location and geographic coordinates of any injection wells, any proposed monitoring wells, and the boundary of the geologic storage facility for which a permit is sought and the applicable AOR. The applicant must indicate the coordinate system used.

(2) The applicant must show within the AOR on the map the number or name and the location of:

(A) all known artificial penetrations through the confining zone, including stratigraphic boreholes, injection wells, producing wells, inactive wells, plugged wells, or dry holes;

(B) the locations of cathodic protection holes, subsurface cleanup sites, bodies of surface water, springs, surface and subsurface mines, quarries, and water wells; and

(C) other pertinent surface features, including pipelines, roads, and structures intended for human occupancy.

(3) The applicant must identify on the map any known or suspected faults expressed at the surface.

(c) Geologic, geochemical, and hydrologic information.

(1) The applicant must submit a descriptive report prepared by a knowledgeable person that includes an interpretation of the results of appropriate logs, surveys, sampling, and testing sufficient to determine the depth, thickness, porosity, permeability, and lithology of, and the geochemistry of any formation fluids in, all relevant geologic formations.

(2) The applicant must submit information on the geologic structure and reservoir properties of the proposed storage reservoir and overlying formations, including the following information:

(A) geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the area from the ground surface to the base of the injection zone within the AOR that indicate the general vertical and lateral limits of all USDWs within the AOR, their positions relative to the storage reservoir and the direction of water movement, where known;

(B) the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of, and the geochemistry of any formation fluids in, the storage reservoir and confining zone and any other relevant geologic formations, including geology/facies changes based on field data, which may include geologic cores, outcrop data, seismic surveys, well logs, and lithologic descriptions, and the analyses of logging, sampling, and testing results used to make such determinations;

(C) the location, orientation, and properties of known or suspected transmissive faults or fractures that may transect the confining zone within the AOR and a determination that such faults or fractures would not compromise containment;

(D) the seismic history, including the presence and depth of seismic sources, and a determination that the seismicity would not compromise containment;

(E) geomechanical information on fractures, stress, ductility, rock strength, and in situ fluid pressures within the confining zone;

(F) a description of the formation testing program used and the analytical results used to determine the chemical and physical characteristics of the injection zone and the confining zone; and

(G) baseline geochemical data for subsurface formations that will be used for monitoring purposes, including all formations containing USDWs within the AOR.

(d) AOR and corrective action. This subsection describes the standards for the information regarding the delineation of the AOR, the identification of penetrations, and corrective action that an applicant must include in an application.

(1) Initial delineation of the AOR and initial corrective action. The applicant must delineate the AOR, identify all wells that require corrective action, and perform corrective action on those wells. Corrective action may be phased.

(A) Delineation of AOR.

(i) Using computational modeling that considers the volumes and/or mass and the physical and chemical properties of the injected CO_2 stream, the physical properties of the formation into which the CO_2 stream is to be injected, and available data including data available from logging, testing, or operation of wells, the applicant must predict the lateral and vertical extent of migration for the CO_2 plume and formation fluids and the pressure differentials required to cause movement of injected fluids or formation fluids into a USDW in the subsurface for the following time periods:

(I) five years after initiation of injection;

(II) from initiation of injection to the end of the injection period proposed by the applicant; and

(III) from initiation of injection until the movement of the CO_2 plume and associated pressure front stabilizes.

(ii) The applicant must use a computational model that:

(I) is based on geologic and reservoir engineering information collected to characterize the injection zone and the confining zone;

(II) is based on anticipated operating data, including injection pressures, rates, temperatures, and total volumes and/or mass over the proposed duration of injection;

(III) takes into account relevant geologic heterogeneities and data quality, and their possible impact on model predictions;

(IV) considers the physical and chemical properties of injected and formation fluids; and

(V) considers potential migration through known faults, fractures, and artificial penetrations and beyond lateral spill points.

(iii) The applicant must provide the name and a description of the model, software, the assumptions used to determine the AOR, and the equations solved.

(B) Identification and table of penetrations. The applicant must identify, compile, and submit a table listing all penetrations, including active, inactive, plugged, and unplugged wells and underground mines in the AOR that may penetrate the confining zone, that are known or reasonably discoverable through specialized knowledge or experience. The applicant must provide a description of each penetration's type, construction, date drilled or excavated, location, depth, and record of plugging and/or completion or closure. Examples of specialized knowledge or experience may include reviews of federal, state, and local government records, interviews with past and present owners, operators, and occupants, reviews of historical information (including aerial photographs, chain of title documents, and land use records), and visual inspections of the facility and adjoining properties.

(C) Corrective action. The applicant must demonstrate whether each of the wells on the table of penetrations has or has not been plugged and whether each of the underground mines (if any) on the table of penetrations has or has not been closed in a manner that prevents the movement of injected fluids or displaced formation fluids that may endanger USDWs or allow the injected fluids or formation fluids to escape the permitted injection zone. The demonstration shall include evidence that the materials used are compatible with the carbon dioxide stream. The applicant must perform corrective action on all wells and underground mines in the AOR that are determined to need corrective action. The operator must perform corrective action using materials suitable for use with the CO_2 stream. Corrective action may be phased.

(2) AOR and corrective action plan. As part of an application, the applicant must submit an AOR and corrective action plan that includes the following information:

(A) the method for delineating the AOR, including the model to be used, assumptions that will be made, and the site characterization data on which the model will be based;

(B) for the AOR, a description of:

(i) the minimum fixed frequency, not to exceed five years, at which the applicant proposes to re-evaluate the AOR during the life of the geologic storage facility;

(ii) how monitoring and operational data will be used to re-evaluate the AOR; and

(iii) the monitoring and operational conditions that would warrant a re-evaluation of the AOR prior to the next scheduled re-evaluation; and

(C) a corrective action plan that describes:

(i) how the corrective action will be conducted;

(ii) how corrective action will be adjusted if there are changes in the AOR;

(iii) if a phased corrective action is planned, how the phasing will be determined; and

(iv) how site access will be secured for future corrective action.

(e) Injection well construction.

(1) Criteria for construction of anthropogenic CO_2 injection wells. This paragraph establishes the criteria for the information about the construction and casing and cementing of, and special equipment for, anthropogenic CO_2 injection wells that an applicant must include in an application.

(A) General. The operator of a geologic storage facility must ensure that all anthropogenic CO_2 injection wells are constructed and completed in a manner that will:

(i) prevent the movement of injected CO_2 or displaced formation fluids into any unauthorized zones or into any areas where they could endanger USDWs;

(ii) allow the use of appropriate testing devices and workover tools; and

(iii) allow continuous monitoring of the annulus space between the injection tubing and long string casing.

(B) Casing and cementing of anthropogenic CO_2 injection wells.

(i) The operator must ensure that injection wells are cased and the casing cemented in compliance with §3.13 of this title (relating to Casing, Cementing, Drilling, Well Control, and Completion Requirements), in addition to the requirements of this section.

(ii) Casing, cement, cement additives, and/or other materials used in the construction of each injection well must have sufficient structural strength and must be of sufficient quality and quantity to maintain integrity over the design life of the injection well. All well materials must be suitable for use with fluids with which the well materials may be expected to come into contact and must meet or exceed test standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards as approved by the director.

(iii) Surface casing must extend through the base of the lowermost USDW above the injection zone and must be cemented to the surface.

(iv) Circulation of cement may be accomplished by staging. The director may approve an alternative method of cementing in cases where the cement cannot be circulated to the surface, provided the applicant can demonstrate by using logs that the cement does not allow fluid movement between the casing and the well bore.

(v) At least one long string casing, using a sufficient number of centralizers, must extend from the surface to the injection zone and must be cemented by circulating cement to the surface in one or more stages. The long string casing must isolate the injection zone and other intervals as necessary for the protection of USDWs and to ensure confinement of the injected and formation fluids to the permitted injection zone using cement and/or other isolation techniques. If the long string casing does not extend through the injection zone, another well string or liner must be cemented through the injection zone (for example, a chrome liner).

(vi) The applicant must verify the integrity and location of the cement using technology capable of radial evaluation of

cement quality and identification of the location of channels to ensure that USDWs will not be endangered.

(vii) The director may exempt existing Class II wells that have been associated with injection of CO_2 for the purpose of enhanced recovery, Class V experimental technology wells, and stratigraphic test wells from provisions of these casing and cementing requirements if the applicant demonstrates that the well construction meets the general performance criteria in subparagraph (A) of this paragraph. A converted well must meet all other requirements under this section. The demonstration must include the following:

(I) as-built schematics and construction procedures to demonstrate that repermitting is appropriate;

(II) recent or newly conducted well-log information and mechanical integrity test results;

(III) a demonstration that any needed remedial actions have been performed;

(IV) a demonstration that the well was engineered and constructed to meet the requirements of subparagraph (A) of this paragraph and ensure protection of USDWs;

(V) a demonstration that cement placement and materials are appropriate for CO_2 injection for geologic storage;

(VI) a demonstration that the well has, and is able to maintain, internal and external mechanical integrity over the life of the project; and

(VII) the results of any additional testing of the well to support a demonstration of suitability for geologic storage.

(C) Special equipment.

(i) Tubing and packer. All injection wells must inject fluids through tubing set on a packer. Packers must be set no higher than 100 feet above the top of the permitted injection interval or at a location approved by the director.

(ii) Pressure observation valve. The wellhead of each injection well must be equipped with a pressure observation valve on the tubing and each annulus of the well.

(2) Construction information. The applicant must provide the following information for each well to allow the director to determine whether the proposed well construction and completion design will meet the general performance criteria in paragraph (1) of this subsection:

(A) depth to the injection zone;

(B) hole size;

(C) size and grade of all casing and tubing strings (e.g., wall thickness, external diameter, nominal weight, length, joint specification and construction material, tubing tensile, burst, and collapse strengths);

(D) proposed injection rate (intermittent or continuous), maximum proposed surface injection pressure, external pressure, internal pressure, axial loading, and maximum proposed volume and mass of the CO_2 stream to be injected;

(E) type of packer and packer setting depth;

(F) a description of the capability of the materials to withstand corrosion when exposed to a combination of the CO_2 stream and formation fluids;

(G) down-hole temperatures and pressures;

(H) lithology of injection and confining zones;

(I) type or grade of cement and additives;

(J) chemical composition and temperature of the CO_2 stream; and

(K) schematic drawings of the surface and subsurface construction details.

(3) Well construction plan. The applicant must submit an injection well construction plan that meets the criteria in paragraph (1) of this subsection.

(4) Well stimulation plan. The applicant must submit a description of the proposed well stimulation program, including a description of the stimulation fluids, and a determination that well stimulation will not compromise containment.

(f) Plan for logging, sampling, and testing of injection wells before injection. The applicant must submit a plan for logging, sampling, and testing of each injection well prior to injection well operation. The plan need not include identical logging, sampling, and testing procedures for all wells provided there is a reasonable basis for different procedures. Such plan is not necessary for existing wells being converted to anthropogenic CO_2 injection wells in accordance with this subchapter, to the extent such activities already have taken place. The plan must describe the logs, surveys, and tests to be conducted to verify the depth, thickness, porosity, permeability, and lithology of, and the salinity of any formation fluids in, the formations that are to be used for monitoring, storage, and confinement to assure conformance with the injection well construction requirements set forth in subsection (e) of this section, and to establish accurate baseline data against which future measurements may be compared. The plan must meet the following criteria and must include the following information.

(1) Logs and surveys of newly drilled and completed injection wells.

(A) During the drilling of any hole that is constructed by drilling a pilot hole that is enlarged by reaming or another method, the operator must perform deviation checks at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.

(B) Before surface casing is installed, the operator must run appropriate logs, such as resistivity, spontaneous potential, and caliper logs.

(C) After each casing string is set and cemented, the operator must run logs, such as a cement bond log, variable density log, and a temperature log, to ensure proper cementing.

(D) Before long string casing is installed, the operator must run logs appropriate to the geology, such as resistivity, spontaneous potential, porosity, caliper, gamma ray, and fracture finder logs, to gather data necessary to verify the characterization of the geology and hydrology.

(2) Testing and determination of hydrogeologic characteristics of injection and confining zone.

(A) Prior to operation, the operator must conduct tests to verify hydrogeologic characteristics of the injection zone.

(B) The operator must perform an initial pressure falloff or other test and submit to the director a written report of the results of the test, including details of the methods used to perform the test and to interpret the results, all necessary graphs, and the testing log, to verify permeability, injectivity, and initial pressure using water or CO_2.

(C) The operator must determine or calculate the fracture pressures for the injection and confining zone. The Commission will include in any permit it might issue a limit of 90% of the fracture pressure to ensure that the injection pressure does not exceed the fracture pressure of the injection zone.

(3) Sampling.

(A) The operator must record and submit the formation fluid temperature, pH, and conductivity, the reservoir pressure, and the static fluid level of the injection zone.

(B) The operator must take whole cores or sidewall cores representative of the injection zone and confining zone and formation fluid samples from the injection zone. The director may require the operator to core other formations in the borehole. The director may accept data from cores and formation fluid samples from nearby wells or other data if the operator can demonstrate to the director that such data are representative of conditions at the proposed injection well. The operator must submit to the director a detailed report prepared by a log analyst that includes well log analyses (including well logs), core analyses, and formation fluid sample information.

(g) Compatibility determination. Based on the results of the formation testing program required by subsection (f) of this section, the applicant must submit a determination of the compatibility of the CO_2 stream with:

(1) the materials to be used to construct the well;

(2) fluids in the injection zone; and

(3) minerals in both the injection and the confining zone.

(h) Mechanical integrity testing.

(1) Criteria. This paragraph establishes the criteria for the mechanical integrity testing plan for anthropogenic CO_2 injection wells that an applicant must include in an application.

(A) Other than during periods of well workover in which the sealed tubing-casing annulus is of necessity disassembled for maintenance or corrective procedures, the operator must maintain mechanical integrity of the injection well at all times.

(B) Before beginning injection operations and at least once every five years thereafter, the operator must demonstrate internal mechanical integrity for each injection well by pressure testing the tubing-casing annulus.

(C) Following an initial annulus pressure test, the operator must continuously monitor injection pressure, rate, temperature, injected volumes and mass, and pressure on the annulus between tubing and long string casing to confirm that the injected fluids are confined to the injection zone. If mass is determined using volume, the operator must provide calculations.

(D) At least once per year until the injection well is plugged, the operator must confirm the absence of significant fluid movement into a USDW through channels adjacent to the injection wellbore (external integrity) using a method approved by the director (e.g., diagnostic surveys such as oxygen-activation logging or temperature or noise logs).

(E) The operator must test injection wells after any workover that disturbs the seal between the tubing, packer, and casing in a manner that verifies internal mechanical integrity of the tubing and long string casing.

(F) An operator must either repair and successfully retest or plug a well that fails a mechanical integrity test.

(2) Mechanical integrity testing plan. The applicant must prepare and submit a mechanical integrity testing plan as part of a permit application. The performance tests must be designed to demonstrate the internal and external mechanical integrity of each injection well. These tests may include:

(A) a pressure test with liquid or inert gas;

(B) a tracer survey such as oxygen-activation logging;

(C) a temperature or noise log;

(D) a casing inspection log; and/or

(E) any alternative method approved by the director, and if necessary by the Administrator of EPA under 40 CFR §146.89(e), that provides equivalent or better information approved by the director.

(i) Operating information.

(1) Operating plan. The applicant must submit a plan for operating the injection wells and the geologic storage facility that complies with the criteria set forth in §5.206(d) of this title, and that outlines the steps necessary to conduct injection operations. The applicant must include the following proposed operating data in the plan:

(A) the average and maximum daily injection rates, temperature, and volumes and/or mass of the CO_2 stream;

(B) the average and maximum surface injection pressure;

(C) the sources of the CO_2 stream and the volume and/or mass of CO_2 from each source; and

(D) an analysis of the chemical and physical characteristics of the CO_2 stream prior to injection.

(2) Maximum injection pressure. The director will approve a maximum injection pressure limit that:

(A) considers the risks of tensile failure and, where appropriate, geomechanical or other studies that assess the risk of tensile failure and shear failure;

(B) with a reasonable degree of certainty will avoid initiation or propagation of fractures in the confining zone or cause otherwise non-transmissive faults transecting the confining zone to become transmissive; and

(C) in no case may cause the movement of injection fluids or formation fluids in a manner that endangers USDWs.

(j) Plan for monitoring, sampling, and testing after initiation of operation.

(1) The applicant must submit a monitoring, sampling, and testing plan for verifying that the geologic storage facility is operating as permitted and that the injected fluids are confined to the injection zone.

(2) The plan must include the following:

(A) the analysis of the CO_2 stream prior to injection with sufficient frequency to yield data representative of its chemical and physical characteristics;

(B) the installation and use of continuous recording devices to monitor injection pressure, rate, temperature, and volume and/or mass, and the pressure on the annulus between the tubing and the long string casing, except during workovers;

(C) after initiation of injection, the performance on a quarterly basis of corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion to en-

sure that the well components meet the minimum standards for material strength and performance set forth in subsection (e)(1)(A) of this section. The operator must report the results of such monitoring semi-annually. Corrosion monitoring may be accomplished by:

(i) analyzing coupons of the well construction materials in contact with the CO_2 stream;

(ii) routing the CO_2 stream through a loop constructed with the materials used in the well and inspecting the materials in the loop; or

(iii) using an alternative method, materials, or time period approved by the director;

(D) monitoring of geochemical and geophysical changes, including:

(i) periodic sampling of the fluid temperature, pH, conductivity, reservoir pressure and static fluid level of the injection zone and monitoring for pressure changes, and for changes in geochemistry, in a permeable and porous formation near to and above the top confining zone;

(ii) periodic monitoring of the quality and geochemistry of a USDW within the AOR and the formation fluid in a permeable and porous formation near to and above the top confining zone to detect any movement of the injected CO_2 through the confining zone into that monitored formation;

(iii) the location and number of monitoring wells justified on the basis of the AOR, injection rate and volume, geology, and the presence of artificial penetrations and other factors specific to the geologic storage facility; and

(iv) the monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data collected under subsection (c)(2) of this section and any modeling results in the AOR evaluation;

(E) tracking the extent of the CO_2 plume and the position of the pressure front by using indirect, geophysical techniques, which may include seismic, electrical, gravity, or electromagnetic surveys and/or down-hole CO_2 detection tools;

(F) a demonstration of external mechanical integrity pursuant to subsection (h)(2) of this section at least once per year until the injection well is plugged, and, if required by the director, a casing inspection log pursuant to requirements in subsection (h)(2) of this section at a frequency established in the testing and monitoring plan;

(G) a pressure fall-off test at least once every five years unless more frequent testing is required by the director based on site-specific information; and

(H) additional monitoring as the director may determine to be necessary to support, upgrade, and improve computational modeling of the AOR evaluation and to determine compliance with the requirements that the injection activity not allow the movement of fluid containing any contaminant into USDWs and that the injected fluid remain within the permitted interval.

(k) Well plugging plan. The applicant must submit a well plugging plan for all injection wells and monitoring wells that includes the following:

(1) a proposal for plugging all monitoring wells that penetrate the base of usable quality water and all injection wells upon abandonment in accordance with §3.14 of this title (relating to Plugging), in addition to the requirements of this section. The proposal must include:

(A) the type and number of plugs to be used;

(B) the placement of each plug, including the elevation of the top and bottom of each plug;

(C) the type, grade, and quantity of material to be used in plugging and information to demonstrate that the material is compatible with the CO_2 stream; and

(D) the method of placement of the plugs;

(2) proposals for activities to be undertaken prior to plugging an injection well, specifically:

(A) flushing each injection well with a buffer fluid;

(B) performing tests or measures to determine bottom-hole reservoir pressure;

(C) performing final tests to assess mechanical integrity; and

(D) ensuring that the material to be used in plugging must be compatible with the CO_2 stream and the formation fluids;

(3) a proposal for giving notice of intent to plug monitoring wells that penetrate the base of usable quality water and all injection wells. The applicant's plan must ensure that:

(A) the operator notifies the director at least 60 days before plugging a well. At this time, if any changes have been made to the original well plugging plan, the operator must also provide a revised well plugging plan. At the discretion of the director, an operator may be allowed to proceed with well plugging on a shorter notice period; and

(B) the operator will file a notice of intention to plug and abandon (Form W-3A) a well with the appropriate Commission district office and the division in Austin at least five days prior to the beginning of plugging operations;

(4) a plugging report for monitoring wells that penetrate the base of usable quality water and all injection wells. The applicant's plan must ensure that within 30 days after plugging the operator will file a complete well plugging record (Form W-3) in duplicate with the appropriate district office. The operator and the person who performed the plugging operation (if other than the operator) must certify the report as accurate;

(5) a plan for plugging all monitoring wells that do not penetrate the base of usable quality water in accordance with 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers); and

(6) a plan for certifying that all monitoring wells that do not penetrate the base of usable quality water will be plugged in accordance with 16 TAC Chapter 76.

(l) Emergency and remedial response plan. The applicant must submit an emergency and remedial response plan that:

(1) accounts for the entire AOR, regardless of whether or not corrective action in the AOR is phased;

(2) describes actions to be taken to address escape from the permitted injection interval or movement of the injection fluids or formation fluids that may cause an endangerment to USDWs during construction, operation, closure, and post-closure periods;

(3) includes a safety plan that includes:

(A) emergency response procedures;

(B) provisions to provide security against unauthorized activity;

(C) CO_2 release detection and prevention measures;

(D) instructions and procedures for alerting the general public and public safety personnel of the existence of an emergency;

(E) procedures for requesting assistance and for follow-up action to remove the public from an area of exposure;

(F) provisions for advance briefing of the public within the AOR on subjects such as the hazards and characteristics of CO_2,

(G) the manner in which the public will be notified of an emergency and steps to be taken in case of an emergency; and

(H) if necessary, proposed actions designed to minimize and respond to risks associated with potential seismic events, including seismic monitoring; and

(4) includes a description of the training and testing that will be provided to each employee at the storage facility on operational safety and emergency response procedures to the extent applicable to the employee's duties and responsibilities. The operator must train all employees before commencing injection and storage operations at the facility. The operator must train each subsequently hired employee before that employee commences work at the storage facility. The operator must hold a safety meeting with each contractor prior to the commencement of any new contract work at a storage facility. Emergency measures specific to the contractor's work must be explained in the contractor safety meeting. Training schedules, training dates, and course outlines must be provided to Commission personnel upon request for the purpose of Commission review to determine compliance with this paragraph.

(m) Post-injection storage facility care and closure plan. The applicant must submit a post-injection storage facility care and closure plan. The plan must include:

(1) a demonstration containing substantial evidence that the geologic storage project will no longer pose a risk of endangerment to USDWs at the end of the post-injection storage facility care timeframe. The demonstration must be based on significant, site-specific data and information, including all data and information collected pursuant subsections (b)-(d) of this section and §5.206(b)(5) of this title;

(2) the pressure differential between pre-injection and predicted post-injection pressures in the injection zone;

(3) the predicted position of the CO_2 plume and associated pressure front at closure as demonstrated in the AOR evaluation required under subsection (d) of this section;

(4) a description of the proposed post-injection monitoring location, methods, and frequency;

(5) a proposed schedule for submitting post-injection storage facility care monitoring results to the director;

(6) the estimated cost of proposed post-injection storage facility care and closure; and

(7) consideration and documentation of:

(A) the results of computational modeling performed pursuant to delineation of the AOR under subsection (d) of this section;

(B) the predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any USDWs, and/or the timeframe for pressure decline to pre-injection pressures;

(C) the predicted rate of CO_2 plume migration within the injection zone, and the predicted timeframe for the stabilization of the CO_2 plume and associated pressure front;

(D) a description of the site-specific processes that will result in CO_2 trapping including immobilization by capillary trapping, dissolution, and mineralization at the site;

(E) the predicted rate of CO_2 trapping in the immobile capillary phase, dissolved phase, and/or mineral phase;

(F) the results of laboratory analyses, research studies, and/or field or site-specific studies to verify the information required in subparagraphs (D) and (E) of this paragraph;

(G) a characterization of the confining zone(s) including a demonstration that it is free of transmissive faults, fractures, and micro-fractures and of appropriate thickness, permeability, and integrity to impede fluid (e.g., CO_2, formation fluids) movement;

(H) the presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic storage project or any other projects in proximity to the predicted/modeled, final extent of the CO_2 plume and area of elevated pressure;

(I) a description of the well construction and an assessment of the quality of plugs of all abandoned wells within the AOR;

(J) the distance between the injection zone and the nearest USDWs above and/or below the injection zone; and

(K) any additional site-specific factors required by the director; and

(8) information submitted to support the demonstration in paragraph (1) of this subsection, which shall meet the following criteria:

(A) all analyses and tests performed to support the demonstration must be accurate, reproducible, and performed in accordance with the established quality assurance standards;

(B) estimation techniques must be appropriate and EPA-certified test protocols must be used where available;

(C) predictive models must be appropriate and tailored to the site conditions, composition of the CO_2 stream, and injection and site conditions over the life of the geologic storage project;

(D) predictive models must be calibrated using existing information (e.g., at Class I, Class II, or Class V experimental technology well sites) where sufficient data are available;

(E) reasonably conservative values and modeling assumptions must be used and disclosed to the director whenever values are estimated on the basis of known, historical information instead of site-specific measurements;

(F) an analysis must be performed to identify and assess aspects of the alternative post-injection storage facility care timeframe demonstration that contribute significantly to uncertainty. The operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration;

(G) an approved quality assurance and quality control plan must address all aspects of the demonstration; and

(H) any additional criteria required by the director.

(n) Fees, financial responsibility, and financial assurance. The applicant must pay the fees, demonstrate that it has met the financial responsibility requirements, and provide the Commission with financial assurance as required under §5.205 of this title (relating to Fees, Financial Responsibility, and Financial Assurance).

(1) The applicant must demonstrate financial responsibility for corrective action, injection well plugging, post-injection storage facility care and storage facility closure, and emergency and remedial response until the director has provided to the operator a written verification that the director has determined that the facility has reached the end of the post-injection storage facility care period.

(2) In determining whether the applicant is financially responsible, the director must rely on the following:

(A) the person's most recent audited annual report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)). The date of the audit may not be more than one year before the date of submission of the application to the division; and

(B) the person's most recent quarterly report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); or

(C) if the person is not required to file such a report, the person's most recent audited financial statement. The date of the audit must not be more than one year before the date of submission of the application to the division.

(o) Letter from the Groundwater Advisory Unit of the Oil and Gas Division. The applicant must submit a letter from the Groundwater Advisory Unit of the Oil and Gas Division in accordance with Texas Water Code, §27.046.

(p) Other information. The applicant must submit any other information requested by the director as necessary to discharge the Commission's duties under Texas Water Code, Chapter 27, Subchapter B-1, or deemed necessary by the director to clarify, explain, and support the required attachments.

§5.204. Notice of Permit Actions and Public Comment Period.

(a) Notice requirements.

(1) The Commission shall give notice of the following actions:

(A) a draft permit has been prepared under §5.202(e) of this title (relating to Permit Required, and Draft Permit and Fact Sheet); and

(B) a hearing has been scheduled under subsection (b)(2) of this section.

(2) General notice by publication. The Commission shall publish notice of a draft permit once a week for three consecutive weeks in a newspaper of general circulation in each county where the storage facility is located or is to be located. The Commission shall also post notice of a draft permit on the Commission's website.

(3) Methods of notification. The Commission shall give notice by the following methods:

(A) Individual notice. Notice of a draft permit or a public hearing shall be given by mailing a copy of the notice to the following persons:

(i) the applicant;

(ii) the EPA;

(iii) the Texas Commission on Environmental Quality, the Texas Water Development Board, the Texas Department of State Health Services, the Texas Parks and Wildlife Department, the Texas General Land Office, the Texas Historical Commission, the United States Fish and Wildlife Service, other Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources, and coastal zone management plans, the Advisory Council on Historic Preservation, including any affected States (Indian Tribes) and any agency that the Commission knows has issued or is required to issue a permit for the same facility under any federal or state environmental program;

(iv) each adjoining mineral interest owner, other than the applicant, of the outermost boundary of the proposed geologic storage facility;

(v) each leaseholder and interest owner of minerals lying above or below the proposed geologic storage facility;

(vi) each adjoining leaseholder of minerals offsetting the outermost boundary of the proposed geologic storage facility;

(vii) each owner or leaseholder of any portion of the surface overlying the proposed geologic storage facility and the adjoining area of the outermost boundary of the proposed geologic storage facility;

(viii) the clerk of the county or counties where the proposed geologic storage facility is located or is proposed to be located;

(ix) the city clerk or other appropriate city official where the proposed geologic storage facility is located within city limits;

(x) any other unit of local government having jurisdiction over the area where the geologic storage facility is or is proposed to be located, and each state agency having any authority under state law with respect to the construction or operation of the geologic storage facility;

(xi) any State, Tribe, or Territory any portion of which is within the AOR of the Class VI project;

(xii) persons on the mailing list developed by the Commission, including those who request in writing to be on the list and by soliciting participants in public hearings in that area for their interest in being included on area mailing lists; and

(xiii) any other class of persons that the director determines should receive notice of the application.

(B) Any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice of a draft permit under this subsection.

(4) Content of notice. Individual notice must consist of:

(A) the applicant's intention to construct and operate an anthropogenic CO_2 geologic storage facility;

(B) a description of the geologic storage facility location;

(C) a copy of any draft permit and fact sheet;

(D) each physical location and the internet address at which a copy of the application may be inspected;

(E) a statement that:

(i) affected persons may protest, and interested persons may request a hearing on, the application;

(ii) protests and requests for a hearing must be filed in writing and must be mailed or delivered to Technical Permitting, Oil and Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711; and

(iii) protests and requests for a hearing must be received by the director within 30 days of the date of receipt of the application by the division, receipt of individual notice, or last publication of notice, whichever is later; and

(F) information satisfying the requirements of 40 CFR §124.10(d)(1).

(5) Individual notice by publication. The applicant must make diligent efforts to ascertain the name and address of each person identified under paragraph (3)(A) of this subsection. The exercise of diligent efforts to ascertain the names and addresses of such persons requires an examination of county records where the facility is located and an investigation of any other information that is publicly and/or reasonably available to the applicant. If, after diligent efforts, an applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (3)(A) of this subsection, the applicant satisfies the notice requirements for those persons by the publication of the notice of application as required in paragraph (2) of this subsection. The applicant must submit an affidavit to the director specifying the efforts that the applicant took to identify each person whose name and/or address could not be ascertained.

(6) Notice to certain communities. The applicant shall identify whether any portions of the AOR encompass an Environmental Justice (EJ) or Limited English-Speaking Household community using the most recent U.S. Census Bureau American Community Survey data. If the AOR incudes an EJ or Limited English-Speaking Household community, the applicant shall conduct enhanced public outreach activities to these communities. Efforts to include EJ and Limited English-Speaking Household communities in public involvement activities in such cases shall include:

(A) published meeting notice in English and the identified language (e.g., Spanish);

(B) comment forms posted on the applicant's webpage and available at public meeting in English and the alternate language;

(C) interpretation services accommodated upon request;

(D) English translation of any comments made during any comment period in the alternate language; and

(E) to the extent possible, public meeting venues near public transportation.

(7) Comment period for a draft permit. Public notice of a draft permit, including a notice of intent to deny a permit application, shall allow at least 30 days for public comment.

(b) Public comment and hearing requirements.

(1) Public comment.

(A) During the public comment period, any interested person may submit written comments on the draft permit and may request a hearing if one has not already been scheduled.

(B) Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(C) The public comment period shall automatically be extended to the close of any public hearing under this section. The hearing examiner may also extend the comment period by so stating at the hearing.

(2) Public hearing.

(A) If the Commission receives a protest regarding an application for a new permit or for an amendment of an existing permit for a geologic storage facility from a person notified pursuant to subsection (a) of this section or from any other affected person within 30 days of the date of receipt of the application by the division, receipt of individual notice, or last publication of notice, whichever is later, then the director will notify the applicant that the director cannot administratively approve the application. Upon the written request of the applicant, the director will schedule a hearing on the application.

(B) The director shall hold a public hearing whenever the director finds, on the basis of requests, a significant degree of public interest in a draft permit.

(C) The director may also hold a public hearing at the director's discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(D) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of a hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(E) Upon the written request of the applicant, the Commission must give notice of a hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After the hearing, the examiner will recommend a final action by the Commission. Notices shall include information satisfying the requirements of 40 CFR §124.10(d)(2) and the Texas Government Code, §2001.052.

(3) If the Commission receives no protest regarding an application for a new permit or for the amendment of an existing permit for a geologic storage facility from a person notified pursuant to subsection (a) of this section or from any other affected person, the director may administratively approve the application.

(4) If the director administratively denies an application for a new permit or for the amendment of an existing permit for a geologic storage facility, upon the written request of the applicant, the director will schedule a hearing. After hearing, the examiner will recommend a final action by the Commission.

(5) Upon making a final permit decision, the director shall issue a response to comments. The response shall specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change, and shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The Commission shall post the response to comments on the Commission's internet website.

§5.205. Fees, Financial Responsibility, and Financial Assurance.

(a) Fees. In addition to the fee for each injection well required by §3.78 of this title (relating to Fees and Financial Security Requirements), the following non-refundable fees must be remitted to the Commission with the application:

(1) Base application fee.

(A) The applicant must pay to the Commission an application fee of $50,000 for each permit application for a geologic storage facility.

(B) The applicant must pay to the Commission an application fee of $25,000 for each application to amend a permit for a geologic storage facility.

(2) Injection fee. The operator must pay to the Commission an annual fee of $0.025 per metric ton of CO_2 injected into the geologic storage facility.

(3) Post-injection care fee. The operator must pay to the Commission an annual fee of $50,000 each year the operator does not inject into the geologic storage facility until the director has authorized storage facility closure.

(b) Financial responsibility.

(1) A person to whom a permit is issued under this subchapter must provide annually to the director evidence of financial responsibility that is satisfactory to the director. The owner or operator must demonstrate and maintain financial responsibility for corrective action, injection well plugging, post-injection storage facility care and storage facility closure, and emergency and remedial response until the director has provided written verification that the director has determined that the facility has reached the end of the post-injection storage facility care period.

(2) In determining whether the person is financially responsible, the director must rely on:

(A) the person's most recent audited annual report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); and

(B) the person's most recent quarterly report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); or

(C) if the person is not required to file such a report, the person's most recent audited financial statement. The date of the audit must not be more than one year before the date of submission of the application to the director.

(3) The applicant's demonstration of financial responsibility must account for the entire AOR, regardless of whether corrective action in the AOR is phased.

(c) Financial assurance. The director shall consider and approve the applicant's demonstration of financial responsibility for all the phases of the geologic sequestration project, including the post-injection storage facility care and closure phase and the plugging phase, prior to issuance of a geologic storage injection well permit.

(1) Injection and monitoring wells. The owner or operator must comply with the requirements of §3.78 of this title for all monitoring wells that penetrate the base of usable quality water and this subsection for all injection wells.

(2) Geologic storage facility.

(A) The applicant must include in an application for a geologic storage facility permit:

(i) a detailed written estimate, in current dollars, of the cost necessary to perform corrective action on wells in the area of review, plugging of injection wells, post-injection monitoring and closure of the facility, and emergency and remedial response that shows all assumptions and calculations used to develop the estimate;

(ii) a copy of the form of the bond or letter of credit that will be filed with the Commission; and

(iii) information concerning the issuer of the bond or letter of credit including the issuer's name and address and evidence of authority to issue bonds or letters of credit in Texas.

(B) A geologic storage facility shall not receive CO_2 until a bond or letter of credit in an amount approved by the director under this subsection and meeting the requirements of this subsection as to form and issuer has been filed with and approved by the director.

(C) The determination of the amount of financial assurance for a geologic storage facility is subject to the following requirements:

(i) The director must approve the dollar amount of the financial assurance. The amount of financial assurance required to be filed under this subsection must be equal to or greater than the maximum amount necessary to perform corrective action, emergency response, and remedial action, post-injection monitoring and site care, and closure of the geologic storage facility, including plugging of wells, at any time during the permit term in accordance with all applicable state laws, Commission rules and orders, and the permit. The cost estimate must be performed for each phase separately and must be based on the costs to the Commission of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator;

(ii) A qualified professional engineer licensed by the State of Texas, as required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, must prepare or supervise the preparation of a written estimate of the highest likely amount necessary to close the geologic storage facility. The owner or operator must submit to the director the written estimate under seal of a qualified licensed professional engineer, as required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act; and

(iii) The Commission may use the proceeds of financial assurance filed under this subsection to pay the costs of plugging any well or wells at the facility if the financial assurance for plugging costs filed with the Commission is insufficient to pay for the plugging of such well or wells.

(D) Bonds and letters of credit filed in satisfaction of the financial assurance requirements for a geologic storage facility must comply with the following standards as to issuer and form.

(i) The issuer of any geologic storage facility bond filed in satisfaction of the requirements of this subsection must be a corporate surety authorized to do business in Texas. The form of bond filed under this subsection must provide that the bond be renewed and continued in effect until the conditions of the bond have been met or its release is authorized by the director.

(ii) Any letter of credit filed in satisfaction of the requirements of this subsection must be issued by and drawn on a bank authorized under state or federal law to operate in Texas. The letter of credit must be an irrevocable, standby letter of credit subject to the requirements of Texas Business and Commerce Code, §§5.101 - 5.118. The letter of credit must provide that it will be renewed and continued in effect until the conditions of the letter of credit have been met or its release is authorized by the director.

(iii) The qualifying financial responsibility instruments must comprise protective conditions of coverage. Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation provisions; specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument; and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

(I) Cancellation. An owner or operator must provide that its financial instrument may not cancel, terminate, or fail to renew except for failure to pay such financial instrument. If there is

a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the director. The cancellation must not be final until at least 120 days after the Commission receives the cancellation notice. The owner or operator must provide an alternate financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable or possible, any funds from the instrument being cancelled must be released within 60 days of notification by the director.

(II) Renewal. If a financial instrument expires, the owner or operator must renew the financial instrument for the entire term of the geologic storage project. The instrument may be automatically renewed as long as the operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of the instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

(III) Financial instrument to remain in effect. Cancellation, termination, or failure to renew shall not occur and the financial instrument shall remain in full force and effect if on or before the date of expiration:

(-a-) the director deems the facility abandoned;

(-b-) the permit is terminated or revoked or a new permit is denied;

(-c-) closure is ordered by the director or a United States district court or other court of competent jurisdiction;

(-d-) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(-e-) the amount due is paid.

(E) During the active life of the geologic storage project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with paragraph (2)(C)(i) of this subsection and provide this adjustment to the director. The owner or operator must also provide to the director written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan, the injection well plugging plan, the post-injection storage facility care and closure plan, and the emergency and remedial response plan.

(F) The owner or operator of a geologic storage facility must provide to the director, and the director must approve, annual written updates of the cost estimate to increase or decrease the cost estimate to account for any changes to the AOR and corrective action plan, the emergency response and remedial action plan, the injection well plugging plan, and the post-injection storage facility care and closure plan. The Director must approve any decrease or increase to the initial cost estimate. During the active life of the geologic storage project, the owner or operator must revise the cost estimate no later than 60 days after the director has approved the request to modify the AOR and corrective action plan, the injection well plugging plan, the post-injection storage facility care and closure plan, and the emergency and response plan, if a change in any of these plans increases the cost. If a change to a plan decreases the cost, any withdrawal of funds must be approved by the director. Any decrease to the value of a financial assurance instrument must first be approved by the director. The revised cost estimate must be adjusted for inflation as specified at paragraph (2)(E) of this subsection. The owner or operator must provide to the director, within 60 days of notification by the director, an adjustment of the cost estimate if the director determines during the annual evaluation of the qualifying financial responsibility instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action, injection well plugging and post-injection storage facility care and closure, and emergency and remedial response.

(G) Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the director or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the operator has received written approval from the director.

(H) The requirement to maintain adequate financial responsibility is directly enforceable regardless of whether the requirement is a condition of the permit.

(i) The owner or operator must maintain financial responsibility until:

(I) the director receives and approves the completed post-injection storage facility care and closure plan; and

(II) the director issues the certificate of closure.

(ii) The owner or operator may be released from a financial instrument in the following circumstances:

(I) The owner or operator has completed the phase of the geologic storage project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the director, including obtaining financial responsibility for the next phase of the geologic storage project, if required; or

(II) The owner or operator has submitted a replacement financial instrument and received written approval from the director accepting the new financial instrument and releasing the owner or operator from the previous financial instrument.

(3) The director may consider allowing the phasing in of financial assurance for only corrective action based on project-specific factors.

(4) The director may approve a reduction in the amount of financial assurance required for post-injection monitoring and/or corrective action based on project-specific monitoring results.

(5) The owner or operator must maintain the required financial responsibility regardless of the status of the director's review of the financial responsibility demonstration.

(d) Notice of adverse financial conditions.

(1) The owner or operator must notify the Commission of adverse financial conditions that may affect the owner's or operator's ability to carry out injection well plugging and post-injection storage facility care and closure. An owner or operator must file any notice of bankruptcy in accordance with §3.1(f) of this title (relating to Organization Report; Retention of Records; Notice Requirements). The owner or operator must give such notice by certified mail.

(2) The owner or operator filing a bond must ensure that the bond provides a mechanism for the bond or surety company to give prompt notice to the Commission and the owner or operator of any action filed alleging insolvency or bankruptcy of the surety company or the bank or alleging any violation that would result in suspension or revocation of the surety or bank's charter or license to do business.

(3) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency or suspension, or revocation of its

charter or license, the Commission must deem the owner or operator to be without bond coverage. The Commission must issue a notice to any owner or operator who is without bond coverage and must specify a reasonable period to replace bond coverage, not to exceed 60 days.

§5.206. Permit Standards.

(a) General permit conditions.

(1) Each condition applicable to a permit shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to the rules in this chapter shall be given in the permit. The requirements listed in this section are directly enforceable regardless of whether the requirement is a condition of the permit.

(2) The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(b) General criteria. The director may issue a permit under this subchapter if the applicant demonstrates and the director finds that:

(1) the injection and geologic storage of anthropogenic CO_2 will not endanger or injure any existing or prospective oil, gas, geothermal, or other mineral resource, or cause waste as defined by Texas Natural Resources Code, §85.046(11);

(2) with proper safeguards, both USDWs and surface water can be adequately protected from CO_2 migration or displaced formation fluids;

(3) the injection of anthropogenic CO_2 will not endanger or injure human health and safety;

(4) the construction, operation, maintenance, conversion, plugging, abandonment, or any other injection activity does not allow the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons;

(5) the reservoir into which the anthropogenic CO_2 is injected is suitable for or capable of being made suitable for protecting against the escape or migration of anthropogenic CO_2 from the storage reservoir;

(6) the geologic storage facility will be sited in an area with suitable geology, which at a minimum must include:

(A) an injection zone of sufficient areal extent, thickness, porosity, and permeability to receive the total anticipated volume of the CO_2 stream; and

(B) a confining zone that is laterally continuous and free of known transecting transmissive faults or fractures over an area sufficient to contain the injected CO_2 stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without compromising the confining zone or causing the movement of fluids that endangers USDWs;

(7) the applicant for the permit meets all of the other statutory and regulatory requirements for the issuance of the permit;

(8) the applicant has provided a letter from the Groundwater Advisory Unit of the Oil and Gas Division in accordance with §5.203(o) of this title (relating to Application Requirements);

(9) the applicant has provided a letter of determination from TCEQ concluding that drilling and operating an anthropogenic CO_2 injection well for geologic storage or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ;

(10) the applicant has provided a signed statement that the applicant has a good faith claim to the necessary and sufficient property rights for construction and operation of the geologic storage facility for at least the first five years after initiation of injection in accordance with §5.203(d)(1)(A) of this title;

(11) the applicant has paid the fees required in §5.205(a) of this title (relating to Fees, Financial Responsibility, and Financial Assurance);

(12) the director has determined that the applicant has sufficiently demonstrated financial responsibility as required in §5.205(b) of this title; and

(13) the applicant submitted to the director financial assurance in accordance with §5.205(c) of this title.

(c) Permit conditions for injection well construction.

(1) Construction of anthropogenic CO_2 injection wells must meet the criteria in §5.203(e) of this title.

(2) Within 30 days after the completion or conversion of an injection well subject to this subchapter, the operator must file with the division a complete record of the well on Commission Form W-2, Oil Well Potential Test, Completion or Recompletion Report and Log showing the current completion.

(3) Except in the case of an emergency repair, the operator of a geologic storage facility must notify the director in writing at least 30 days prior to conducting any well workover that involves running tubing and setting packers, beginning any workover or remedial operation, or conducting any required pressure tests or surveys. Such activities shall not commence before the end of the 30 days unless authorized by the director. In the case of an emergency repair, the operator must notify the director of such emergency repair as soon as reasonably practical.

(d) Permit conditions for operating a geologic storage facility.

(1) Operating plan.

(A) The operator must maintain and comply with the approved operating plan.

(B) Prior to approval for the operation of a Class VI injection well, the operator shall submit, and the director shall consider, the following information:

(i) the final AOR based on modeling, using data obtained during logging and testing of the well and the formation as required by clauses (ii), (iii), (iv), (vi), (vii), and (x) of this subparagraph;

(ii) any relevant updates, based on data obtained during logging and testing of the well and the formation as required by clauses (iii), (iv), (vi), (vii), and (x) of this subparagraph to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted to satisfy the requirements of §5.203(c)(2) and (3) of this title;

(iii) information on the compatibility of the CO_2 stream with fluids in the injection zones and minerals in both the injection and the confining zones, based on the results of the formation testing program, and with the materials used to construct the well;

(iv) the results of the formation testing program required by §5.203(f) of this title;

(v) final injection well construction procedures that meet the requirements of §5.203(e) of this title;

(vi) the status of corrective action on wells in the AOR;

(vii) all available logging and testing program data on the well required by §5.203(f) of this title;

(viii) a demonstration of mechanical integrity pursuant to §5.203(h) of this title;

(ix) any updates to the proposed AOR and corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection storage facility care and closure plan, or the emergency and remedial response plan submitted under §5.203(m) of this subchapter, which are necessary to address new information collected during logging and testing of the well and the formation as required by this section, and any updates to the alternative post-injection storage facility care timeframe demonstration submitted under §5.203(m) of this title, which are necessary to address new information collected during the logging and testing of the well and the formation as required by this section; and

(x) any other information requested by the director.

(2) Operating criteria.

(A) Injection between the outermost casing protecting USDWs and the well bore is prohibited.

(B) The total volume of CO_2 injected into the storage facility must be metered through a master meter or a series of master meters. The volume and/or mass of CO_2 injected into each injection well must be metered through an individual well meter. If mass is determined using volume, the operator must provide calculations.

(C) The operator must comply with a maximum surface injection pressure limit approved by the director and specified in the permit. In approving a maximum surface injection pressure limit, the director must consider the results of well tests and, where appropriate, geomechanical or other studies that assess the risks of tensile failure and shear failure. The director must approve limits that, with a reasonable degree of certainty, will avoid initiation or propagation of fractures in the confining zone or cause otherwise non-transmissive faults or fractures transecting the confining zone to become transmissive. In no case may injection pressure cause movement of injection fluids or formation fluids in a manner that endangers USDWs. The Commission shall include in any permit it might issue a limit of 90 percent of the fracture pressure to ensure that the injection pressure does not initiate new fractures or propagate existing fractures in the injection zone(s). In no case may injection pressure initiate fractures in the confining zone(s) or cause the movement of injection or formation fluids that endangers a USDW. The director may approve a plan for controlled artificial fracturing of the injection zone.

(D) The operator must fill the annulus between the tubing and the long string casing with a corrosion inhibiting fluid approved by the director. The owner or operator must maintain on the annulus a pressure that exceeds the operating injection pressure, unless the director determines that such requirement might harm the integrity of the well or endanger USDWs.

(E) The operator must install and use continuous recording devices to monitor the injection pressure, and the rate, volume, and temperature of the CO_2 stream. The operator must monitor the pressure on the annulus between the tubing and the long string casing. The operator must continuously record, continuously monitor, or control by a preset high-low pressure sensor switch the wellhead pressure of each injection well.

(F) The operator must comply with the following requirements for alarms and automatic shut-off systems.

(i) The operator must install and use alarms and automatic shut-off systems designed to alert the operator and shut-in the well when operating parameters such as annulus pressure, injection rate or other parameters diverge from permitted ranges and/or gradients. On offshore wells, the automatic shut-off systems must be installed down-hole.

(ii) If an automatic shutdown is triggered or a loss of mechanical integrity is discovered, the operator must immediately investigate and identify as expeditiously as possible the cause. If, upon investigation, the well appears to be lacking mechanical integrity, or if monitoring otherwise indicates that the well may be lacking mechanical integrity, the operator must:

(I) immediately cease injection;

(II) take all steps reasonably necessary to determine whether there may have been a release of the injected CO_2 stream into any unauthorized zone;

(III) notify the director as soon as practicable, but within 24 hours;

(IV) restore and demonstrate mechanical integrity to the satisfaction of the director prior to resuming injection; and

(V) notify the director when injection can be expected to resume.

(e) Permit conditions for monitoring, sampling, and testing requirements.

(1) The operator of an anthropogenic CO_2 injection well must maintain and comply with the approved monitoring, sampling, and testing plan to verify that the geologic storage facility is operating as permitted and that the injected fluids are confined to the injection zone.

(2) All permits shall include the following requirements:

(A) the proper use, maintenance, and installation of monitoring equipment or methods;

(B) monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including, when required, continuous monitoring;

(C) reporting no less frequently than as specified in §5.207 of this title (relating to Reporting and Record-Keeping).

(3) The director may require additional monitoring as necessary to support, upgrade, and improve computational modeling of the AOR evaluation and to determine compliance with the requirement that the injection activity not allow movement of fluid that would endanger USDWs.

(4) The director may require measures and actions designed to minimize and respond to risks associated with potential seismic events, including seismic monitoring.

(5) The operator shall comply with the following monitoring and record retention requirements.

(A) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) The permittee shall retain records of all monitoring information, including the following:

(i) calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the permit application, for a period of at least ten years from the date of the sample, measurement, report, or application. This period may be extended by the director at any time; and

(ii) the nature and composition of all injected fluids until ten years after the completion of any plugging and abandonment procedures specified in §5.203(k)(2) of this title for the injection wells. The director may require the operator to submit the records to the director at the conclusion of the retention period. This period may be extended by the director at any time.

(C) Records of monitoring information shall include:

(i) the date, exact place, and time of sampling or measurements;

(ii) the individuals who performed the sampling or measurements;

(iii) the dates analyses were performed;

(iv) the individuals who performed the analyses;

(v) the analytical techniques or methods used; and

(vi) the results of such analyses.

(D) Operators of Class VI wells shall retain records as specified in this subchapter.

(f) Permit conditions for mechanical integrity.

(1) The operator must maintain and comply with the approved mechanical integrity testing plan submitted in accordance with §5.203(j) of this title.

(2) The operator must establish mechanical integrity prior to commencing injection. Thereafter, other than during periods of well workover in which the sealed tubing-casing annulus is of necessity disassembled for maintenance or corrective procedures, the operator must maintain mechanical integrity of the injection well at all times.

(3) If the director determines that the injection well lacks mechanical integrity, the director shall give written notice of the director's determination to the operator. Unless the director requires immediate cessation, the operator shall cease injection into the well within 48 hours of receipt of the director's determination. The director may allow plugging of the well or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The operator may resume injection upon written notification of the director's determination that the operator has demonstrated the well has mechanical integrity.

(4) The operator must either repair and successfully retest or plug a well that fails a mechanical integrity test. However, the director may allow the operator of a well which lacks internal mechanical integrity because there is a leak in the casing, tubing, or packer to continue or resume injection if the operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

(5) The director may require additional or alternative tests if the results presented by the operator do not demonstrate to the director that there is no significant leak in the casing, tubing, or packer or movement of fluid into or between formations containing USDWs resulting from the injection activity.

(g) Permit conditions for AOR and corrective action. At the frequency specified in the approved AOR and corrective action plan or permit, and whenever warranted by a material change in the monitoring and/or operational data or in the evaluation of the monitoring and operational data by the operator, but no less frequently than every five years, the operator of a geologic storage facility also must:

(1) perform a re-evaluation of the AOR by performing all of the actions specified in §5.203(d)(1)(A) - (C) of this title to delineate the AOR;

(2) identify all wells in the re-evaluated AOR that require corrective action;

(3) perform corrective action on wells requiring corrective action in the re-evaluated AOR in the same manner specified in §5.203(d)(1)(C) of this title;

(4) submit an amended AOR and corrective action plan or demonstrate to the director through monitoring data and modeling results that no change to the AOR and corrective action plan is needed. Any amendments to the AOR and corrective action plan must be approved by the director, must be incorporated into the permit, and are subject to the permit modification requirements at §5.202 of this title (relating to Permit Required, and Draft Permit and Fact Sheet), as applicable; and

(5) retain all modeling inputs and data used to support AOR reevaluations for at least 10 years.

(h) Permit conditions for emergency, mitigation, and remedial response.

(1) Plan. The operator must maintain and comply with the approved emergency and remedial response plan required by §5.203(l) of this title. The operator must update the plan in accordance with §5.207(a)(2)(D)(vi) of this title (relating to Reporting and Record-Keeping). The operator must make copies of the plan available at the storage facility and at the company headquarters. The emergency and remedial response plan and the demonstration of financial responsibility must account for the AOR delineated as specified in §5.203(d)(1)(A) - (C) of this title or the most recently evaluated AOR delineated under subsection (g) of this section, regardless of whether or not corrective action in the AOR is phased.

(2) Training.

(A) The operator must prepare and implement a plan to train and test each employee at the storage facility on occupational safety and emergency response procedures to the extent applicable to the employee's duties and responsibilities. The operator must make copies of the plan available at the geological storage facility. The operator must train all employees before commencing injection and storage operations at the facility. The operator must train each subsequently hired employee before that employee commences work at the storage facility.

(B) The operator must hold a safety meeting with each contractor prior to the commencement of any new contract work at a storage facility. The operator must explain emergency measures specific to the contractor's work in the contractor safety meeting.

(C) The operator must provide training schedules, training dates, and course outlines to Commission personnel annually and upon request for the purpose of Commission review to determine compliance with this paragraph.

(3) Action.

(A) If an operator obtains evidence that the injected CO_2 stream and associated pressure front may cause an endangerment to USDWs, the operator must:

(i) immediately cease injection;

(ii) take all steps reasonably necessary to identify and characterize any release;

(iii) notify the director as soon as practicable but within at least 24 hours; and

(iv) implement the approved emergency and remedial response plan.

(B) If any water quality monitoring of a USDW indicates the movement of any contaminant into the USDW, except as authorized by an aquifer exemption, the director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting, including plugging of the injection well, as are necessary to prevent such movement.

(4) Resumption of injection. The director may allow the operator to resume injection prior to remediation if the operator demonstrates that the injection operation will not endanger USDWs.

(i) Permit conditions for Commission witnessing of testing and logging. The operator must provide the division with the opportunity to witness all planned well workovers, stimulation activities, other than stimulation for formation testing, and testing and logging. The operator must submit a proposed schedule of such activities to the Commission at least 30 days prior to conducting the first such activity and submit notice at least 48 hours in advance of any actual activity. Such activities shall not commence before the end of the 30 days unless authorized by the director.

(j) Permit conditions for well plugging. The operator of a geologic storage facility must maintain and comply with the approved well plugging plan required by §5.203(k) of this title.

(k) Permit conditions for post-injection storage facility care and closure.

(1) Post-injection storage facility care and closure plan.

(A) The operator of an injection well must maintain and comply with the approved post-injection storage facility care and closure plan.

(B) The operator must update the plan in accordance with §5.207(a)(2)(D)(vi) of this title. At any time during the life of the geologic sequestration project, the operator may modify and resubmit the post-injection site care and site closure plan for the director's approval within 30 days of such change. Any amendments to the post-injection site care and site closure plan must be approved by the director, be incorporated into the permit, and are subject to the permit modification requirements in §5.202 of this title, as appropriate.

(C) Upon cessation of injection, the operator of a geologic storage facility must either submit an amended plan or demonstrate to the director through monitoring data and modeling results that no amendment to the plan is needed.

(2) Post-injection storage facility monitoring. Following cessation of injection, the operator must continue to conduct monitoring as specified in the approved plan until the director determines that the position of the CO_2 plume and pressure front are such that the geologic storage facility will not endanger USDWs.

(3) Prior to closure. Prior to authorization for storage facility closure, the operator must demonstrate to the director, based on monitoring, other site-specific data, and modeling that is reasonably consistent with site performance that no additional monitoring is needed to assure that the geologic storage facility will not endanger USDWs. The operator must demonstrate, based on the current understanding of the site, including monitoring data and/or modeling, all of the following:

(A) the estimated magnitude and extent of the facility footprint (the CO_2 plume and the area of elevated pressure);

(B) that there is no leakage of either CO_2 or displaced formation fluids that will endanger USDWs;

(C) that the injected or displaced fluids are not expected to migrate in the future in a manner that encounters a potential leakage pathway into USDWs;

(D) that the injection wells at the site completed into or through the injection zone or confining zone will be plugged and abandoned in accordance with these requirements; and

(E) any remaining facility monitoring wells will be properly plugged or are being managed by a person and in a manner approved by the director.

(4) Notice of intent for storage facility closure. The operator must notify the director in writing at least 120 days before storage facility closure. At the time of such notice, if the operator has made any changes to the original plan, the operator also must provide the revised plan. The director may approve a shorter notice period.

(5) Authorization for storage facility closure. No operator may initiate storage facility closure until the director has approved closure of the storage facility in writing. After the director has authorized storage facility closure, the operator must plug all wells in accordance with the approved plan required by §5.203(k) of this title and submit a plugging record (Form W-3) as required by §3.14 of this title (relating to Plugging).

(6) Storage facility closure report. Once the director has authorized storage facility closure, the operator must submit a storage facility closure report within 90 days that must thereafter be retained by the Commission in Austin. The report must include the following information:

(A) documentation of appropriate injection and monitoring well plugging. The operator must provide a copy of a survey plat that has been submitted to the Regional Administrator of Region 6 of the EPA. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks including the Latitude/Longitude or X/Y coordinates of the surface location in the NAD 27, NAD 83, or WGS 84 coordinate system, a labeled scale bar, and northerly direction arrow;

(B) documentation of appropriate notification and information to such state and local authorities as have authority over drilling activities to enable such state and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zones; and

(C) records reflecting the nature, composition, volume and mass of the CO_2 stream. If mass is determined using volume, the operator must provide calculations.

(7) Certificate of closure. Upon completion of the requirements in paragraphs (3) - (6) of this subsection, the director will issue a certificate of closure. At that time, the operator is released from the requirement in §5.205(c) of this title to maintain financial assurance.

(l) Permit conditions for deed notation. The operator of a geologic storage facility must record a notation on the deed to the facility property; on any other document that is normally examined during title

search; or on any other document that is acceptable to the county clerk for filing in the official public records of the county that will in perpetuity provide any potential purchaser of the property the following information:

(1) a complete legal description of the affected property;

(2) that land has been used to geologically store CO_2;

(3) that the survey plat has been filed with the Commission;

(4) the address of the office of the United States Environmental Protection Agency, Region 6, to which the operator sent a copy of the survey plat; and

(5) the volume and mass of fluid injected, the injection zone or zones into which it was injected, and the period over which injection occurred. If mass is determined using volume, the operator must provide calculations.

(m) Permit conditions for retention of records. The permittee shall retain records as follows.

(1) All modeling inputs and data used to support area of review reevaluations under subsection (e) of this section shall be retained for 10 years.

(2) The permittee shall retain records as follows:

(A) All data collected under §5.203 of this title for Class VI permit applications shall be retained throughout the life of the geologic storage project and for 10 years following site closure.

(B) Data on the nature and composition of all injected fluids collected pursuant to §5.203(i)(1)(D) of this title shall be retained until 10 years following site closure. The director may require the operator to submit the records to the director at the conclusion of the retention period.

(C) Monitoring data collected pursuant to §5.203(j)(2) of this title shall be retained for 10 years after it is collected.

(D) Well plugging reports, post-injection site care data, including data and information used to develop the demonstration of the alternative post-injection site care timeframe, and the site closure report collected pursuant to requirements of subsection (k)(6) of this section and paragraph (4) of this subsection shall be retained for 10 years following site closure.

(E) The director has authority to require the operator to retain any records required in this subchapter for longer than 10 years following site closure.

(3) Within 60 days after plugging, the operator must submit, pursuant to §5.207(b)(2) of this title, a plugging report to the director. The report must be certified as accurate by the operator and by the person who performed the plugging operation (if other than the operator.) The operator shall retain the well plugging report for 10 years following site closure.

(4) The operator must submit a site closure report to the director within 90 days of site closure, which must thereafter be retained at a location designated by the director for 10 years following site closure. The report must include:

(A) documentation of appropriate injection and monitoring well plugging as specified in §5.203(k) of this title. The operator must provide a copy of a survey plat which has been submitted to the local zoning authority designated by the director. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks. The operator must also submit a copy of the plat to the Regional Administrator of the appropriate EPA Regional Office; and

(B) documentation of appropriate notification and information to such State, local and Tribal authorities that have authority over drilling activities to enable such State, local, and Tribal authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zone(s); and

(5) Records reflecting the nature, composition, and volume of the CO_2 plume shall be retained for 10 years following site closure.

(6) The operator must retain for 10 years following storage facility closure records collected to prepare the permit application, data on the nature and composition of all injected fluids, and records collected during the post-injection storage facility care period. The operator must submit the records to the director at the conclusion of the retention period, and the records must thereafter be retained at the Austin headquarters of the Commission.

(n) Permit conditions for signs. The operator must identify each location at which geologic storage activities take place, including each injection well, by a sign that meets the requirements specified in §3.3(1), (2), and (5) of this title (relating to Identification of Properties, Wells, and Tanks). In addition, each sign must include a telephone number where the operator or a representative of the operator can be reached 24 hours a day, seven days a week in the event of an emergency.

(o) Other permit terms and conditions.

(1) Protection of USDWs. In any permit for a geologic storage facility, the director must impose terms and conditions reasonably necessary to protect USDWs. Permits issued under this subchapter shall be issued for the operating life of the facility and the post-injection storage facility care period. The director shall review each permit at least once every five years to determine whether it should be modified, revoked and reissued, or terminated. Permits issued under this subchapter continue in effect until revoked, modified, or terminated by the Commission. The operator must comply with each requirement set forth in this subchapter as a condition of the permit unless modified by the terms of the permit.

(2) Other conditions. The following conditions shall also be included in any permit issued under this subchapter.

(A) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. However, the permittee need not comply with the provisions of the permit to the extent and for the duration such noncompliance is authorized in an emergency permit under 40 CFR §144.34.

(B) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(C) Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(D) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the op-

eration of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(E) Property rights not conveyed. The issuance of a permit does not convey property rights of any sort, or any exclusive privilege.

(F) Activities not authorized. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

(G) Coordination with exploration. The permittee of a geologic storage well shall coordinate with any operator planning to drill through the AOR to explore for oil and gas or geothermal resources and take all reasonable steps necessary to minimize any adverse impact on the operator's ability to drill for and produce oil and gas or geothermal resources from above or below the geologic storage facility.

(H) Duty to provide information. The operator shall furnish to the Commission, within a time specified by the Commission, any information that the Commission may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The operator shall also furnish to the Commission, upon request, copies of records required to be kept under the conditions of the permit.

(I) Inspection and entry. The operator shall allow any member or employee of the Commission, on proper identification, to:

(i) enter upon the premises where a regulated activity is conducted or where records are kept under the conditions of the permit;

(ii) have access to and copy, during reasonable working hours, any records required to be kept under the conditions of the permit;

(iii) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(iv) sample or monitor any substance or parameter for the purpose of assuring compliance with the permit or as otherwise authorized by the Texas Water Code, §27.071, or the Texas Natural Resources Code, §91.1012.

(J) Schedule of compliance: The permit shall, when appropriate, specify a schedule of compliance leading to compliance with all provisions of this subchapter and Chapter 3 of this title. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(i) Any schedule of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(ii) If the schedule of compliance is for a duration of more than one year from the date of permit issuance, then interim requirements and completion dates (not to exceed one year) must be incorporated into the compliance schedule and permit.

(iii) Progress reports must be submitted no later than 30 days following each interim date and the final date of compliance.

(K) Modification, revocation and reissuance, or termination. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(L) Signatory requirement. All applications, reports, or information shall be signed and certified.

(M) Reporting requirements.

(i) Planned changes. The permittee shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility.

(ii) Anticipated noncompliance. The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(iii) Transfers. This permit is not transferable to any person except after notice to and approval by the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the SDWA.

(iv) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(v) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

(vi) Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally to the director within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided to the director within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The permittee shall report any noncompliance which may endanger health or the environment including:

(I) any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; and

(II) any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

(N) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

(O) Other noncompliance. The permittee shall report all instances of noncompliance not reported under subsection (e) of this section, subparagraphs (J) and (M) of this paragraph, and §5.207(a)(2)(A) of this title at the time monitoring reports are submitted. Any information shall be provided orally to the director within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided to the director within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The reports required by this subparagraph shall contain the following information:

(i) any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; and

(ii) any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

(P) Incorporation of requirements in permits. New permits, and to the extent allowed under §5.202 of this title modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. An applicable requirement is a State statutory or regulatory requirement that takes effect prior to final administrative disposition of the permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in §5.202 of this title.

(Q) Compliance with SWDA and related regulations. In addition to conditions required in all permits, the director shall establish conditions in permits as required on a case-by-case basis to provide for and assure compliance with all applicable requirements of the SWDA and 40 CFR Parts 144, 145, 146 and 124.

§5.207. Reporting and Record-Keeping.

(a) Reporting requirements. The operator of a geologic storage facility must provide, at a minimum, the following reports to the director and retain the following information:

(1) Test records. The operator must file a complete record of all tests in duplicate with the district office within 30 days after the testing. In conducting and evaluating the tests enumerated in this subchapter or others to be allowed by the director, the operator and the director must apply methods and standards generally accepted in the industry. When the operator reports the results of mechanical integrity tests to the director, the operator must include a description of any tests and methods used. In making this evaluation, the director must review monitoring and other test data submitted since the previous evaluation.

(2) Operating reports. The operator also must include summary cumulative tables of the information required by the reports listed in this paragraph.

(A) Report within 24 hours. The operator must report the items listed in clauses (i) through (v) of this subparagraph to the director and the appropriate district office orally as soon as practicable, but within 24 hours of discovery, and in writing within five working days of discovery. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The operator shall report the following items:

(i) the discovery of any significant pressure changes or other monitoring data that indicate the presence of leaks in the well or the lack of confinement of the injected gases to the geologic storage reservoir;

(ii) any evidence that the injected CO_2 stream or associated pressure front may cause an endangerment to a USDW;

(iii) any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs;

(iv) any triggering of a shut-off system (i.e., downhole or at the surface); and

(v) any failure to maintain mechanical integrity.

(B) Report within 30 days. The operator must report:

(i) the results of periodic tests for mechanical integrity;

(ii) the results of any other test of the injection well conducted by the operator if required by the director; and

(iii) a description of any well workover.

(C) Semi-annual report. The operator must report:

(i) a summary of well head pressure monitoring;

(ii) changes to the source as well as the physical, chemical, and other relevant characteristics of the CO_2 stream from the proposed operating data;

(iii) monthly average, maximum and minimum values for injection pressure, flow rate, temperature, and volume and/or mass, and annular pressure;

(iv) monthly annulus fluid volume added;

(v) a description of any event that significantly exceeds operating parameters for annulus pressure or injection pressure as specified in the permit;

(vi) a description of any event that triggers a shutdown device and the response taken; and

(vii) the results of monitoring prescribed under §5.206(e) of this title (relating to Permit Standards).

(D) Annual reports. The operator must submit an annual report detailing:

(i) corrective action performed;

(ii) new wells installed and the type, location, number, and information required in §5.203(e) of this title (relating to Application Requirements);

(iii) re-calculated AOR unless the operator submits a statement signed by an appropriate company official confirming that monitoring and operational data supports the current delineation of the AOR on file with the Commission;

(iv) the updated area for which the operator has a good faith claim to the necessary and sufficient property rights to operate the geologic storage facility;

(v) tons of CO_2 injected; and

(vi) other information as required by the permit.

(E) Annual updates. The operator must maintain and update required plans in accordance with the provisions of this subchapter.

(i) Operators must submit an annual statement, signed by an appropriate company official, confirming that the operator has:

(I) reviewed the monitoring and operational data that are relevant to a decision on whether to reevaluate the AOR and the monitoring and operational data that are relevant to a decision on whether to update an approved plan required by §5.203 or §5.206 of this title; and

(II) determined whether any updates were warranted by material change in the monitoring and operational data or in the evaluation of the monitoring and operational data by the operator.

(ii) Operators must submit either the updated plan or a summary of the modifications for each plan for which an update the operator determined to be warranted pursuant to subclause (I) of this clause. The director may require submission of copies of any updated plans and/or additional information regarding whether or not updates of any particular plans are warranted.

(3) The director may require the revision of any required plan following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the director or whenever the director determines that such a revision is necessary to comply with the requirements of this subchapter.

(b) Report format.

(1) The operator must report the results of injection pressure and injection rate monitoring of each injection well on Form H-10, Annual Disposal/Injection Well Monitoring Report, and the results of internal mechanical integrity testing on Form H-5, Disposal/Injection Well Pressure Test Report. Operators must submit other reports in a format acceptable to the Commission. At the discretion of the director, other formats may be accepted.

(2) The operator must submit all required reports, submittals, and notifications under this subchapter to the director and to the EPA in an electronic format approved by the director and the Regional Administrator, respectively.

(c) Signatories to reports.

(1) Reports. All reports required by permits and other information requested by the director, shall be signed by a person described in §5.203(a)(1)(B) of this title, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(A) the authorization is made in writing by a person described in §5.203(a)(1)(B) of this title;

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; and

(C) the written authorization is submitted to the director.

(2) Changes to authorization. If an authorization under paragraph (1) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (1) of this subsection must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. All reports required by permits and other information requested by the director under this subchapter, shall be certified as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(e) Record retention.

(1) The operator must retain all data collected under §5.203 of this title for Class VI permit applications throughout the life of the geologic sequestration project and for 10 years following storage facility closure.

(2) The operator must retain data on the nature and composition of all injected fluids collected pursuant to §5.203(j)(2)(A) of this title until 10 years after storage facility closure. The operator shall submit the records to the director at the conclusion of the retention period, and the records must thereafter be retained at the Austin headquarters of the Commission.

(3) The operator must retain all testing and monitoring data collected pursuant to the plans required under §5.203(j) of this title, including wellhead pressure records, metering records, and integrity test results, and modeling inputs and data used to support AOR calculations for at least 10 years after the data is collected.

(4) The operator must retain well plugging reports, post-injection storage facility care data, including data and information used to develop the demonstration of the alternative post-injection storage facility care timeframe, and the closure report collected pursuant to the requirements of §5.206(k)(6) and (m) of this title for 10 years following storage facility closure.

(5) The operator must retain all documentation of good faith claim to necessary and sufficient property rights to operate the geologic storage facility until the director issues the final certificate of closure in accordance with §5.206(k)(7) of this title.

(6) The director has authority to require the operator to retain any records required in this subchapter for longer than 10 years after storage facility closure.

(7) The director may require the operator to submit the records to the director at the conclusion of the retention period.

This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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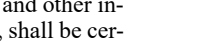

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS
SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.86

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 4, Subchapter D, §4.86, Optional Dual Credit or Dual Enrollment Program: College Connect Courses, with changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3021). The rule will be republished. A brief summary of the changes include clarifications regarding student eligibility requirements and withdrawals.

The Coordinating Board has adopted the establishment of the College Connect Courses rule framework to provide an optional foundation for public institutions of higher education to deliver innovatively designed courses integrating college-level content for secondary-level students. Institutions have the option to deliver courses in one of two modalities already in use: dual credit or dual enrollment.

These courses will interweave standard college-level coursework in the institution's core curriculum with supportive integrated skills curriculum designed to give high school students tools to take on college-level work. Institutions already have legal authority to offer college-level coursework to students (Texas Education Code §28.009); this rule provides more detailed guidance on an optional framework built on that existing authority.

Subsection 4.86(a) states the authority for these rules, which are promulgated under Texas Education Code (TEC) §§28.009(b), 130.001(b)(3)-(4), and 130.008.

Subsection 4.86(b) states the purpose of this new rule, which is to provide an optional foundation to encourage public institutions of higher education to offer these innovatively designed courses, giving secondary students exposure to both college-level content and supportive college readiness skills.

Subsection 4.86(c) lists criteria for student eligibility to enroll in these classes. Students must either demonstrate having met college readiness standards in accordance with TEC chapter 51, subchapter F-1, or they must show exemption from that statute as non-degree-seeking or non-certificate-seeking students under Education Code §51.338(a).

New subsection 4.86(d) was added in response to comments. This provision allows an institution more flexibility to determine appropriate requirements for a student who is not college ready. The provisions states that institutions may add additional eligibility requirements as necessary to determine whether a student is ready to enter a College Connect Course. This provision affirms institutions' existing discretion to determine the appropriate academic program to fit students' needs and capabilities. The Coordinating Board relettered the subsequent subsections accordingly.

Subsection 4.86(e) pertains to the course content of College Connect Courses. The rule encourages institutions to offer College Connect Courses from their core curriculum catalog, as those courses must transfer across public institutions of higher education in Texas (TEC §61.822). In addition, this rule stipulates that, for students who have not yet demonstrated readiness under proposed subsection 4.86(c)(2), institutions should provide supplemental instructional content to support these students through a method at their discretion.

Subsection 4.86(f) provides that Coordinating Board staff may provide technical assistance upon request. The Coordinating Board has existing plans and authorization to develop course material that may be of assistance to institutions seeking to offer College Connect Courses.

Subsection 4.86(g) contains additional academic policies. This subsection states that students enrolled in these courses must finish with two grades, with the college-level grade determined according to a method determined by the institution. Institutions must also enter into institutional agreements to offer College Connect Courses, in accordance with TEC §28.009(b-2). This subsection encourages institutions to adopt academic policies that provide maximum latitude to a student to withdraw from the college-level component, currently a matter of institutional policy. The Coordinating Board revised subsection (g)(3) in response to comment to substitute the word "withdraw" for drop to align the text with the terminology used by institutions. The section specifies that college connect courses do not count toward the excess semester credit hour limit for funding, in accordance with TEC §61.0595(d)(5).

Subsection 4.86(h) contains funding and tuition policies specifically for College Connect Courses offered through the dual credit option. This subsection restates current statute related to funding and tuition, including that dual credit courses may receive formula funding under TEC §61.059 and that institutions may waive tuition for dual credit courses under TEC §54.216.

The following 5 comments were received regarding the adoption of the new rules. The Coordinating Board made edits to the proposed rules based on these comments.

Comment 1 from Tarleton State University:

Tarleton State University submitted a public comment on behalf of the Tarleton Today Dual Enrollment Program. The Program stated they began a program for Dual Enrollment at Tarleton State University. The Program offered four courses in our inaugural year of 2023-24, two of which could be on the cusp of being considered non-core. The courses of Agricultural Economics and Animal Science could be considered non-core at first consideration; however, the Program comments that Animal Science in many State-funded institutions is accepted as a four-hour science requirement. The Program requests that Agricultural Economics should be considered a core subject requirement for Economics moving forward. The curriculum is extremely challenging and has proven to be one of the most rigorous courses on our home campus.

Response 1:

The Coordinating Board appreciates this comment and notes that requests for changes to an institution's core curriculum courses are managed through the agency's approval process (https://www.highered.texas.gov/our-work/supporting-our-institutions/institutional-resources/transfer-resources/texas-core-curriculum/). Regardless of whether the course is offered as a dual credit or dual enrollment course, a College Connect Course must be in the core curriculum of the institution providing the credit.

Comment 2 from San Jacinto College:

1. Regarding subsection 4.86(b), the college presents the following questions for clarification: how does "supportive integrated skills curriculum" relate to co-requisite courses or student success courses? Are they similar? Is "College Connect" perhaps the application of those concepts directly to core curriculum courses? If not, and the content is intended to be added to existing courses, how is this different from existing "supplemental instruction" programs at various institutions? If additional content is to be added to a course, how is that expected to affect contact hours and credit hours of those courses?

2. Regarding subsection 4.86(c), the college states students must be college-ready or show exemption from that statute as non-degree-seeking or non-certificate seeking students. The college asks for clarification if students are previously college-ready, what is expected of "supportive integrated skills curriculum" that is beyond the scope of what many institutions already do to support students, e.g., library instruction, tutoring centers, embedded tutors, supplemental instruction?

3. The college requests clarification as to whether students are exempt from the college-ready requirement because they are non-degree seeking or non-certificate students, how is that or will that be reconciled with other rules or regulations that require all dual credit students to be on a degree or certificate or pathway?

4. Related to subsection 4.86(d), the college comments that institutions will provide "supplemental instructional content" to support students "who have not yet demonstrated readiness" in core curriculum courses, and asks whether the proposed rules only apply to core curriculum courses with lower, pre-requisite "college readiness" levels (required reading and math levels)? The college asks if the rule is intended to apply to the entire core curriculum, how are students that are not explicitly college-ready expected to enroll in a course that explicitly requires students to be college ready? Do the proposed rules suggest that college readiness levels be waived for students in order to provide "College Connect" courses?

5. The college comments that subsection 4.86(f) describes "students enrolled in these courses must finish with two grades. . . . and encourages institutions to. . . . provide maximum latitude to drop the college-level component," and asks whether this a state-wide implementation of the On Ramps model for dual credit/enrollment?

6. The college notes that subsection 4.86(g) mentions "formula funding," and asks how are these rules affected by the new community college funding model?

Response 2:

The Coordinating Board appreciates these comments and provides the following responses.

1. Integrated skills curriculum objectives are generally not outlined in college-level learning outcomes but are supportive of students' learning and mastery of those learning outcomes. Examples of integrated skills curriculum that are recommended under the rule may include an aligned corequisite model, supplemental instruction, digital learning modules (i.e., D2S2), and student success courses. An institution should provide integrated curriculum in addition to the college-level course content that is aligned in support of such content to help ensure underprepared students' successful mastery of the college-level content. The college-level component should adhere, at minimum, to the learning outcomes and contact hours as outlined in the Lower-Division Academic Course Guide Manual.

2. For college-ready students, there is no further expectation of integrated skills curriculum beyond what institutions already do to support students.

3. A student who has successfully earned 14 semester credit hours or fewer of dual credit courses at a public institution of higher education is not required to file a degree plan with the institution (as outlined in TEC 51.9685(c-2) and TAC Chapter 4, Subchapter T, Rule 4.344) and may be considered non-degree seeking. The proposed Chapter 4, Subchapter D, Rule 4.86, applies only to a student who has not earned more than 14 semester credit hours of college credit at an institution of higher education and would not be required to file a degree plan with the institution.

4. To clarify, college readiness requirements (i.e., TSI) apply only to entry-level college courses that the institution offering the course determines to be reading/writing or math-intensive. The *Lower-Division Academic Course Guide Manual* outlines which courses require additional pre-requisite(s) for students enrolling in those courses. Through the non-degree/certificate seeking exemption, a student who otherwise may not have access to college courses may experience college courses while also receiving additional support to help ensure the student's success in gaining high school and potentially also college credit.

5. Institutions should determine the appropriate latitude to grant when establishing policies with regard to College Connect Courses, and are encouraged to adopt policies that provide maximum latitude to students enrolled in dual credit and dual enrollment courses. Institutions should also consider SACSCOC and other applicable policies (e.g., National Alliance of Concurrent Enrollment Partnerships) when making those determinations. OnRamps dual enrollment courses and some colleges' dual credit course offerings already incorporate models where grading for high school course credit is separate from grading for college credit. The experiences of institutions taking this approach suggests that this separation can benefit both students and institutions, for example, by allowing students to earn high school credit even if they are not able to earn college credit for a course.

6. While the Coordinating Board anticipates that College Connect Courses offered as dual credit courses will likely be funded in the same way as other dual credit courses with regard to the new community college funding model, especially with regard to students' completion of 15 hours that apply to academic or workforce programs, it should be noted that rules and policies with regard to the funding model are still under consideration and have not been finally adopted by the Board.

Comment 3 from McLennan Community College:

McClennan Community College comments that in subsection (f)(3), the word "drop" should be replaced by "withdraw" to align with THECB terminology. Student Drops are handled before census and are not reported, withdraws are after census as they include students who have been reported to the state.

Response 3:

The Coordinating Board agrees with this comment. The Coordinating Board has revised subsection (f)(3) to address this recommendation.

Comment 4 from College of the Mainland:

College of the Mainland offered the following comments on the proposed rule changes, specifically the eligibility requirements.

1. Only non-degree seeking students: this eliminates ECHS students as the designation of an ECHS program specifically states students will earn a degree or 60 credit hours toward a degree. This group could benefit from these courses and potentially increase the number degrees earned. Currently we can only offer ECHS students a few courses (EDUC 1300, SPCH, Fine Art) until they pass the TSI. Students who are not college ready by the beginning of their junior year cannot move forward and will not complete a degree because the remaining courses have college readiness requirements. Allowing the ECHS students to take a college course under this rule would help a significant number of make progress toward their degree.

2. The college comments that the limitation on students who have earned more than 15 SCH would eliminate that participation of students who have earned credits in ENGL, HIST, GOVT but are not yet college ready in math. The rule, as drafted, would require a student to enroll in a College Connect Course for math prior to earning 15 SCH. The college notes that they have students that could potentially graduate from high school being core complete if they were eligible to take a college math class. The college notes that it appears to be the intent to have students take the College Connect course early so they can take additional courses to reach the goal of earning at least 12 SCH; that makes sense for reading/writing courses but not for math courses.

The college requests clarification on the following questions:

3. What criteria should be used to determine which students are eligible for the College Connect course? Would it be like the multiple measures (GPA, grades in ENGL or MATH) that we use with traditional students? Should the college use the same criteria that they currently use for co-req courses? Does the college set the criteria or will THECB provide criteria?

4. Every initiative comes with a request to report results. How should we track and report outcomes for dual credit students in a regular college course vs. a College Connect course?

5. Will the courses remain 48 contact hours? If the contact hours increase, how will the courses fit into the schedule at the high schools or at COM?

6. When are colleges expected to implement the new College Connect course?

Response 4:

1. The Coordinating Board respectfully disagrees that a student must be college ready in order to access dual credit courses but does agree that access to the college course experience will increase under this new program. While Chapter 4, Subchapter G, Rule 4.155, requires that an ECHS be assessed using an instrument otherwise approved by the Board for Texas Success Initiative purposes, Rule 4.155 also states that the student must meet eligibility requirements in accordance with Rules 4.81 - 4.85 to enroll in college level courses for dual credit. Rule 4.85 requires that a student demonstrate readiness prior to enrollment in academic dual credit, as outlined in subsection (b). Under Rule 4.85, however, a student is not required to be "college-ready" (i.e., TSI-met/TSI-complete) in order to enroll in dual credit courses. High school students are able to access dual credit courses through indicators not outlined in TSI statute but authorized under Rule 4.85, including English II EOC, Algebra I EOC + Algebra II grade, PSAT/NMSQT, and PLAN/ACT-Aspire scores. Students who access dual credit courses using these indicators and who successfully complete the course with a grade of A, B, or C will be considered and reported as TSI-met/TSI-complete in the applicable subject area(s). Also, students with fewer than 14 SCH who are non-degree/non-certificate seeking will have increased access to the college course experience by taking College Connect Courses.

2. Education Code §51.9685(c-2) requires all students to file a degree plan with the college "at the end of the second regular semester or term immediately following the semester or term in which the student earned a cumulative total of 15 or more semester credit hours of course credit for dual credit courses successfully completed by the student." Once students file a degree plan, they are considered degree seeking, and must demonstrate meeting college readiness standards to enroll in dual credit or dual enrollment courses.

3. Institutions offering College Connect Courses for students who are non-degree/non-certificate seeking and have not met indicators outlined in Rule 4.57 or an exemption outlined in Rule 4.54 may make their own determinations about which eligibility requirements are appropriate. Institutions are encouraged to consider students' career interests and academic pathways in their determination. Subsection (c)(3) has been added to the rules to clarify this option.

4. The Coordinating Board is studying how best to require reporting and tracking for College Connect Courses and will provide more details as they become available.

5. Each institution offering College Connect Courses may determine the appropriate contact hours to ensure the college-level content and supplemental college readiness content, as applicable, are addressed. Institutions should collaborate with their school district partners to address considerations to ensure students receive high school credit towards graduation requirements and articulate agreed-upon practices and policies in the agreement between the school district and institution, as required in subsection (f)(2) and according to Rule 4.84.

6. College Connect Courses are optional for institutions to implement. The Board will consider this rule for adoption during the August 24, 2023, board meeting.

Comment 5 from The University of Texas at El Paso:

The University of Texas at El Paso offered the following comments requesting clarification about the applicability of the rules:

1. Can institutions set their own requirements for students to participate in the co-requisite courses?

a. For example, UTEP requires that students take the TSIA and have a diagnostic level 5 for placement into the co-requisite courses. Why would high school students with a lower TSIA score than what we require at UTEP be allowed to participate in College Connect? Is this a policy to be worked out by community colleges, universities, and ISDs?

b. Should students who are freshmen and sophomores be college ready? They have not taken all their required math - it makes sense they are not college ready. Should there be a requirement for this class to be offered as a Junior or Senior?

2. Adding this program would mean that there are five paths for students to take college level courses at the high school level: ECHS, Dual Credit, College Prep, Texas College Bridge, and now College Connect, correct? It is my understanding that these programs are run via Community Colleges primarily. Universities

may not have a strong voice in how and what is offered. How will this be addressed?

3. Will this require an MOU with each of the ISD's?

4. Institutions offer different types of co-requisites with different college level courses. The structure, content, pedagogy, and curriculum are different. For example, UTEP offers a co-requisite with Math 1320, not Math 1342. How will this impact the students who enter our institution?

5. If school districts receive funding for each college ready student, would they not then require most or all students to enroll in the college connect course? This has multiple implications:

a. The rule states in the Government Growth Impact section that it will not require the creating or elimination of employee positions. Is this true? If co-requisite courses are offered in the high school would institutions need to eliminate Developmental Math/English positions?

b. This then leads to the question that if most of the students take this course and receive college level credit, why would they need to take Algebra 2 or Geometry? They already have college credit.

c. Additionally, students who take the college-level course from high school teachers who are credentialed to teach college-level courses have a lower success rate than students who take the college-level course from college instructors. How are universities and community colleges going to serve the multitude of districts/students?

Response 5:

1. Yes, institutions may determine which eligibility requirement(s) are appropriate for high school students enrolling in the College Connect Course. These requirement(s) may include aligned corequisite models as the required college readiness content for students entering without meeting the requirements in Rule 4.57 or exemptions in Rule 4.54 (i.e., the students are classified as non-degree seeking). We have added new subsection (d)) to clarify this allowance.

a. Institutions may determine which eligibility requirement(s) are appropriate, as addressed above.

b. As part of their considerations for eligibility requirements, institutions may determine if certain grade-level eligibility is an appropriate requirement.

2. To clarify, the pathways for students to earn college credit at the high school level are: ECHS, Dual Credit, Dual Enrollment, College Connect Courses, and testing options like AP, IB, and CLEP. These pathways to earn college credit while in high school, including the College Connect Course option, are available to Texas public institutions of higher education, including both community colleges and universities. Please note that Texas College Bridge is a type of College Preparatory Course that may result in a TSI exemption, but not college credit as referenced in Texas Education Code 28.014 and Rule 4.54 (a)(10).

3. Yes, Rule 4.86(f)(2) requires that institutions must enter into an agreement with the secondary school, pursuant to Rule 4.84.

4. Rules regarding the transferability of a dual credit course are not impacted by the rules proposed under Rule 4.86.

5. The Coordinating Board notes that it is optional for an institution of higher education to offer this course model. It is not required by these rules. Further, a school district may determine which options are appropriate for their students to have access to postsecondary opportunities, including the College Connect Course option.

a. The institution choosing to offer the College Connect Course may use corequisite models as the college readiness content required for students who enroll without meeting one of the benchmarks in Rule 4.57 or an exemption outlined in Rule 4.54, including the non-degree seeking designation. As with all corequisite model planning, the institution may determine which faculty member or instructor is appropriately qualified to teach the corequisite component. Whether teaching positions are impacted is also an institutional determination.

b. The school district may determine how access to and completion of dual credit courses impact the students' completion of state required credits for high school graduation.

c. Institutions are encouraged to consider their capacity to offer high quality postsecondary options for students when determining whether to offer such programming. Institutions may access technical assistance offered by THECB in developing and providing these courses as authorized by Rule 4.86(e).

The new section is adopted under Texas Education Code, Sections 28.009(b), which provides the Coordinating Board with existing authority to adopt rules as necessary concerning dual credit programs, and 130.008(a-3), which gives the Coordinating Board existing authority to adopt rules regarding existing courses for joint high school and junior college credit.

The adopted new section affects Texas Education Code §§28.009, 130.001(b, and 130.008, and Texas Administrative Code, chapter 4, subchapter D, sections 4.83(7) and (8).

§4.86. Optional Dual Credit or Dual Enrollment Program: College Connect Courses.

(a) Authority. These rules are authorized by Texas Education Code §§28.009(b), 130.001(b)(3) - (4), and 130.008.

(b) Purpose. The purpose of this rule is to encourage and authorize public institutions of higher education to deliver innovatively designed dual credit or dual enrollment courses that integrate both college-level content in the core curriculum of the institution alongside college-readiness content and skills instruction. These innovatively designed courses will allow students the maximum flexibility to obtain college credit and provide integrated college readiness skills to students who are on the continuum of college readiness and will benefit from exposure to college-level content.

(c) Student eligibility. An eligible student must be enrolled in a public school district or open-enrollment charter as defined in Texas Education Code §5.001(6). An institution of higher education may offer College Connect Courses to:

(1) A student who has met the college readiness standards set forth in subchapter C, §4.57 of this chapter (relating to College Ready Standards); or

(2) A student who has not yet demonstrated college readiness by achieving minimum passing standards set forth in §4.57 of this chapter, if the student is:

(A) a non-degree-seeking or non-certificate seeking student under Texas Education Code §51.338(a); and

(B) has earned not more than 14 semester credit hours of college credits at an institution of higher education; or

(C) a student who is otherwise exempt from the Texas Success Initiative, as set forth in subchapter C, §4.54 of this chapter (relating to Exemptions, Exceptions, and Waivers).

(d) An institution may add eligibility requirements for students qualifying under subsection (c)(2)(A) and (B) of this section.

(e) Course content. The following standards apply to delivery of College Connect Courses offered under this rule:

(1) An institution of higher education may offer College Connect Courses within the institution's core curriculum in accordance with subchapter B, §4.28 of this chapter (relating to Core Curriculum).

(2) An institution of higher education must also incorporate supplemental college readiness content to support students who have not yet demonstrated college readiness as defined in §4.57 of this chapter within these courses. An institution may deliver this supplemental instruction through a method at their discretion, including through embedded course content, supplemental corequisite coursework, or other method.

(f) Coordinating Board staff may provide technical assistance to public institutions of higher education and secondary schools and districts in developing and providing these courses.

(g) Additional Academic Policies.

(1) College Connect Courses offered through dual credit or dual enrollment must confer both a college-level grade and a secondary-level grade upon a student's successful completion of the course. A grade conferred for the college-level course may be different from the secondary-level grade, to reflect whether a student has appropriately demonstrated college-level knowledge and skills as well as secondary-level knowledge and skills. An institution may determine how a student enrolled in this course may earn college credit, whether through college-level course completion or successful completion of a recognized college-level assessment.

(2) An institution of higher education must enter into an institutional agreement with the secondary school according to §4.84 of this chapter (relating to Institutional Agreements) to offer College Connect Courses.

(3) An institution of higher education is strongly encouraged to provide the maximum latitude possible for a student to withdraw from the college-level course component beyond the census date, while still giving the student an opportunity to earn credit toward high school graduation requirements.

(4) Hours earned through this program before the student graduates from high school that are used to satisfy high school graduation requirements do not count against the limitation on formula funding for excess semester credit hours under chapter 13, subchapter F, §13.104 of this title (relating to Exemptions for Excess Hours).

(h) Funding and Tuition. For College Connect Courses offered through dual credit under this option:

(1) An institution of higher education may receive formula funding for College Connect Course semester credit hours in accordance with Texas Education Code §61.059 and chapter 130, subchapter A, and any Coordinating Board rules that authorize funding for courses offered under this section.

(2) An institution of higher education may waive a student's tuition for College Connect Courses in accordance with Texas Education Code §§54.216 and 28.0095.

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 August 23, 2023.

TRD-202303139
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: September 12, 2023
Proposal publication date: June 16, 2023
For further information, please call: (512) 427-6537

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

26 TAC §746.201

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §746.201, concerning What are my responsibilities as the permit holder.

Section 746.201 is adopted without changes to the proposed text as published in the June 16, 2023, issue of the *Texas Register* (48 TexReg 3169). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted rule updates a reference to Texas Family Code to correct a typographical error. While the reference was accurately referenced in the proposed version of the rule as published in the September 23, 2022, issue of the *Texas Register* (47 TexReg 6102), the reference in the recently adopted rule was incorrect in that it referenced Texas Family Code §261.10. The adopted rule corrects the reference to §261.101.

COMMENTS

The 31-day comment period ended July 17, 2023.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

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

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

Filed with the Office of the Secretary of State on August 22, 2023.

TRD-202303092
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: September 11, 2023
Proposal publication date: June 16, 2023
For further information, please call: (512) 221-9021

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.55

The Texas Department of Public Safety (the department) adopts amendments to §15.55, concerning Waiver of Knowledge and/or Skills Tests. This rule is adopted without changes to the proposed text as published in the June 23, 2023, issue of the *Texas Register* (48 TexReg 3398) and will not be republished.

The proposed rule amendment waives the knowledge and skills exams for an applicant that presents a non-commercial driver license that is valid or not expired over two years from another U.S. state, U.S. territory or province of Canada and reorganizes the rule for better readability.

No comments were received regarding the adoption of this rule.

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

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

Filed with the Office of the Secretary of State on August 25, 2023.

TRD-202303155
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: September 14, 2023
Proposal publication date: June 23, 2023
For further information, please call: (512) 424-5848

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

37 TAC §23.62

The Texas Department of Public Safety (the department) adopts amendments to §23.62, concerning Violations and Penalty Schedule. This rule is adopted without changes to the proposed text as published in the June 23, 2023, issue of the *Texas Register* (48 TexReg 3399) and will not be republished.

The proposed rule amendments make various changes to the requirements relating to emissions inspections and the related conduct of inspectors and station owners and clarifies the department's authority to immediately suspend or revoke the certificate of an inspector or inspection station if the action is found to be necessary to prevent or remedy a threat to public health, safety, or welfare.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

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 August 25, 2023.

TRD-202303156
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: September 14, 2023
Proposal publication date: June 23, 2023
For further information, please call: (512) 424-5848

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 443. CERTIFICATION CURRICULUM MANUAL

37 TAC §§443.1, 443.3, 443.5, 443.7, 443.9

The Texas Commission on Fire Protection (Commission) adopts proposed amendments to 37 Texas Administrative Code Chapter 443, Certification Manual, concerning the proposed amendments to §443.1, Approval by the Curriculum and Testing Committee; §443.3, Approval by the Texas Commission on Fire Protection; §443.5, Effective Date of New or Revised Curricula and Training Programs Required by Law or Rule; §443.7, Effective Date of New or Revised Curricula and Training Programs Which Are Voluntary; and §443.9, National Fire Protection Association Standard. The purpose of the adopted proposed amendments reflects the shift of responsibilities of the Curriculum Manual from the Fire Fighter Advisory Committee to the Curriculum and Testing Committee. Section 443.1, Approval by the Curriculum and

Testing Committee, as published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2831) is adopted with change and will be republished. Changes reflect the shift of responsibility from the Fire Fighter Advisory Committee to the Curriculum and Testing Committee which was overlooked during publication. Section 443.3, Approval by the Texas Commission on Fire Protection, §443.5, Effective Date of New or Revised Curricula and Training Programs Required by Law or Rule, §443.7, Effective Date of New or Revised Curricula and Training Programs Which Are Voluntary, and §443.9, National Fire Protection Association Standard, are adopted without change as published in the June 2, 2023, issue of the *Texas Register* (48 TexReg 2831), and will not be republished.

No comments were received from the public regarding the adoption of the proposed amended sections.

The rules are adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

§443.1. Approval by the Curriculum and Testing Committee.

(a) All proposals for new or revised curricula and training programs must be submitted to the Curriculum and Testing Committee for approval.

(b) The Curriculum and Testing Committee may:

(1) submit proposals to a subcommittee formed of members of the Curriculum and Testing Committee for study and review before approval; or

(2) submit proposals to an advisory committee formed of members of the fire service who are recommended by the Curriculum and Testing Committee and appointed by the commission to report to the Fire Fighter Advisory Committee, for study and review before approval.

(c) All proposals approved by the Curriculum and Testing Committee shall be placed on the next Commission agenda for review and approval.

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 August 23, 2023.

TRD-202303118
Mike Wisko
Agency Chief
Texas Commission on Fire Protection
Effective date: September 12, 2023
Proposal publication date: June 2, 2023
For further information, please call: (512) 936-3841

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, Subchapter AA, Commissioner's Rules, pursuant to Texas Government Code, §2001.039. As required by Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting Chapter 33, Subchapter AA, continue to exist.

The public comment period on the review begins September 8, 2023, and ends October 9, 2023. A form for submitting public comments on the proposed rule review is available on the TEA website at https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review.

TRD-202303173
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: August 28, 2023

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Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 289, RADIATION CONTROL

SUBCHAPTER C, TEXAS REGULATIONS FOR CONTROL OF RADIATION

SUBCHAPTER D, GENERAL

SUBCHAPTER E, REGISTRATION REGULATIONS

SUBCHAPTER F, LICENSE REGULATIONS

SUBCHAPTER G, REGISTRATION REGULATIONS

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 289, RADIATION CONTROL, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review 25 TAC Chapter 289" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=25&pt=1&ch=289.

TRD-202303192
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: August 29, 2023

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality files this Notice of Intention to Review 30 Texas Administrative Code Chapter 7, Memoranda of Understanding.

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 7 continue to exist.

Comments regarding suggested changes to the rules in Chapter 7 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by TCEQ.

Submittal of Comments

TCEQ invites public comment on this review of the rules in Chapter 7. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: tceq.commentinput.com. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-100-007-LS. Comments must be received

by October 9, 2023. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

TRD-202303189
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 29, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 60, Compliance History.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 60 continue to exist.

Comments regarding suggested changes to the rules in Chapter 60 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 60. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-096-060-CE. Comments must be received by October 9, 2023. For further information, please contact Brandy Wright, Enforcement Division, at (512) 239-2530.

TRD-202303180
Gitanjali Yadav
Deputy Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 29, 2023

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The Texas Commission on Environmental Quality files this Notice of Intention to Review 30 Texas Administrative Code Chapter 213, Edwards Aquifer.

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 213 continue to exist.

Comments regarding suggested changes to the rules in Chapter 213 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by TCEQ.

Submittal of Comments

TCEQ invites public comment on this review of the rules in Chapter 213. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: tceq.commentinput.com. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-098-213-CE. Comments must be received by October 9, 2023. For further information, please contact Zachary King, Program Support and Environmental Assistance Division, at (512) 239-1931.

TRD-202303182
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 29, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 230, Groundwater Availability Certifications for Platting.

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 230 continue to exist.

Comments regarding suggested changes to the rules in Chapter 230 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by TCEQ.

Submittal of Comments

TCEQ invites public comment on this review of the rules in Chapter 230. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: tceq.commentinput.com. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-099-230-OW. Comments must be received by October 9, 2023. For further information, please contact Jade Rutledge, Water Availability Division, at (512) 239-4559.

TRD-202303186
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 29, 2023

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The Texas Commission on Environmental Quality files this Notice of Intention to Review 30 Texas Administrative Code Chapter 307, Texas Surface Water Quality Standards.

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, TCEQ will assess whether the reasons for initially adopting the rules in Chapter 307 continue to exist.

Comments regarding suggested changes to the rules in Chapter 307 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by TCEQ.

Submittal of Comments

TCEQ invites public comment on this review of the rules in Chapter 307. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: tceq.commentinput.com. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-097-307-OW. Comments must be received by October 7, 2023. For further information, please contact Debbie Miller, Project Manager, Water Quality Planning Division, at (512) 239-1703.

TRD-202303181
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 29, 2023

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EXIT

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §13.474(b)

Funded Outcome	Funded Value	Funded Value for Completion in a High-Demand Field
(1) Dual Credit or Dual Enrollment Fundable Outcome	$1,700	n/a
(2) Transfer Fundable Outcome or Structured Co-Enrollment Fundable Outcome	$3,500	n/a
(3) Fundable Credentials	*See subtypes below*	*See subtypes below*
(A) Licensure/Certification, as defined in 13.472(16)(C)(iii)	$1,000	$1,250
(B) Institutional Credential Leading to a Licensure/Certification	$1,000	$1,250
(C) Occupational Skills Award	$750	$1,000
(D) Certificate (Advanced Technical Certificate, Level 1 or Level 2 Certificate)	$1,750	$3,500
(E) Associate Degree	$3,500	$4,500
(F) Baccalaureate Degree	$3,500	$4,500

Figure: 26 TAC §749.4419

Type of pre-service training	When the caregiver must complete the training
(1) General Pre-Service required in (a)(1) in Figure: 26 TAC §749.863(a)	Before you issue the non-expiring foster home verification, unless you waive the training requirement according to §749.868 of this chapter (relating to Can a child-placing agency waive pre-service training requirements for a foster parent?).
(2) Normalcy required in (a)(2) in Figure: 26 TAC §749.863(a)	Before you issue the non-expiring foster home verification unless you waive the training requirement according to §749.868 of this chapter.
(3) Emergency Behavior Intervention, if you do not allow the use of emergency behavior intervention, required in (a)(3) in Figure: 26 TAC §749.863(a)	Before you issue the non-expiring foster home verification, unless: (A) The caregiver is exempt because the caregiver cares exclusively for children receiving treatment services for primary medical needs; or (B) You waive the training requirement according to §749.868 of this chapter.
(4) Emergency Behavior Intervention, if you allow the use of emergency behavior intervention required in (a)(4) in Figure: 26 TAC §749.863(a)	According to the time frames in (a)(4)(C) in in Figure: 26 TAC §749.863(a), unless: (A) The caregiver is exempt because the caregiver cares exclusively for children receiving treatment services for primary medical needs; or (B) You waive the training requirement according to §749.868 of this chapter.
(5) Safe Sleeping required in (a)(5) in Figure: 26 TAC §749.863(a)	If kinship foster home will care for a child younger than two years of age, according to the time frames in (a)(5)(C) in in Figure: 26 TAC §749.863(a).
(6) Administering Psychotropic Medication in (a)(6) in Figure: 26 TAC §749.863(a)	Before the caregiver administers psychotropic medication.

Figure: 26 TAC §749.4421(b)(2)

If DFPS or SSCC:	**Then you must complete the following home screening requirements before you issue a provisional foster home verification:**
(A) Provides you with a kinship home assessment	(i) Review and evaluate the kinship home assessment for compliance with the foster home screening requirements in Subchapter M, Division 2 of this chapter; (ii) After you review and evaluate the assessment, document the following in an addendum to the assessment: (I) Any additional information required for the overall assessment to comply with Subchapter M, Division 2 of this chapter; and (II) How you addressed any areas of non-compliance, risk factors, or risk indicators you identified during your review and evaluation with the kinship foster parents; and (iii) Meet the requirements in §749.4423 of this division (relating to What information must I obtain from a Texas Department of Family and Protective Services (DFPS) kinship development worker or Single Source Continuum Contractor (SSCC) equivalent and document in a foster home screening for a provisional kinship foster home verification?).
(B) Does not provide you with a copy of the kinship home assessment or did not complete a kinship home assessment	(i) Complete a home screening that meets the requirements specified in Subchapter M, Division 2 of this chapter; and (ii) Meet the requirements in §749.4423 of this division.

Figure: 37 TAC §35.52(a)

Violation	1st Action	2nd Action within 2 years	3rd Action within 2 years	4th Action within 2 years
Failure to display required items on uniform — TAC 35.14	$250	$500	Suspension, 60 days	Revocation
Failure to establish drug-free workplace policy —TAC 35.13	$250	$500	Suspension, 60 days	Revocation
Failing to complete required continuing education – TAC 35.161	$250	$500	Suspension, 60 days	Revocation
Failure to notify Department of change in ownership — OCC 1702.129	$500	$1000	Suspension, 60 days	Revocation
Failure to notify Department of required information —OCC 1702.129	$250	$500	Suspension, 60 days	Revocation
Failure to maintain records — TAC 35.3, 35.111; 35.112	$250	$500	Suspension, 60 days	Revocation
Failure to conduct pre-employment check – TAC 35.3	$250	$500	Suspension, 60 days	Revocation
Failure to license employee —OCC 1702.386	$500	$1000	Suspension, 60 days	Revocation
Failure to license employee -- ineligible individual -- OCC 1702.386	$1000	Suspension, 60 days	Revocation	
Failure to provide report to client within 7 days— TAC 35.6	$500	$1000	Suspension, 60 days	Revocation
Failure to qualify company representative (90 days) — TAC 35.43	$250	$500	Suspension, 60 days	Revocation
Comp. Rep. failing to oversee business— TAC 35.41 (company violation)	$1,000	Suspension, 60 days	Revocation	
Operating while suspended or expired —OCC 1702.101 -- .1025; 1702.361	$500	$1000	Suspension, 60 days	Revocation
Operating outside of scope of license —OCC 1702.101 --.1025; 1702.361	$5000	Revocation		
Failure to present pocket card, valid ID upon request -- TAC 35.5	$250	$500	Suspension, 60 days	Revocation
Failure to cooperate with investigation or inspection -- TAC 35.5	$500	$1000	Revocation	

Consumer information violation -- TAC 35.8	$250	$500	Suspension, 60 days	Revocation
Advertising violation -- TAC 35.5; 35.9	$500	$1000	Suspension, 60 days	Revocation
Capias or arrest warrant violation – TAC 35.10	$500	$1,000	Suspension, 60 days	Revocation
Operating without license – OCC. 1702.101 – 1025; 1702.388	$5,000	$5,000	$5,000	$5,000
School record violation -- TAC 35.147; 35.162	$250	$500	Suspension, 60 days	Revocation
Firearm violations -- TAC 35.7	$500	$1000	Suspension, 60 days	Revocation
Requiring proof of vaccination — TAC 35.5(d)	$250	$500	Suspension, 60 days	Revocation
Employee/public interactions – TAC 35.5 (e) or (f)	$250	$500	Suspension, 60 days	Revocation

Figure: 37 TAC §36.60(a)

Violation	1st Violation	2nd within 2 years	3rd within 2 years	4th within 2 years
Address				
Address on File. (37 TAC §36.3)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Forms				
Forms. (37 TAC §36.4)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Declaration of Extent of Catalytic Converter Transactions (Occ. Code §1956.022, .024, or .127)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Ownership				
Change in Ownership. (37 TAC §36.13)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Locations				
Adding or Changing Locations. (37 TAC §36.18)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Notice to Sellers. (Occ. Code, §1956.031)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Display Current Certificate of Registration (37 TAC §36.15(c))	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Records				
Information Regarding Seller. (Occ. Code, §1956.032)	Reprimand	Admin Penalty up to $500	Admin Penalty up to $1000	Revocation
Record of Purchase. (Occ. Code, §1956.033)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Documentation of Fire-Salvaged Insulated Communications Wire. (37 TAC §36.33)	Reprimand	Admin Penalty up to $500	Admin Penalty up to $1000	Revocation
Photograph or Recording Requirement (Occ. Code, §1956.0331)	Reprimand	Admin Penalty up to $500	Admin Penalty up to $1000	Revocation
Preservation of Records. (Occ. Code, §1956.034)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Inspection of Records. (Occ. Code, §1956.035)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Reporting Requirements. (37 TAC §36.31)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Furnishing of Report to Department. (Occ. Code, §1956.036)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Placement of Items on Hold. (Occ. Code, §1956.037)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Conduct				
Standards of Conduct. (37 TAC §36.36 (a), (b), (d), (f) or (g).	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation
Explosives. (37 TAC §36.36 (c))	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation

Hours for Purchasing Material. (Occ. Code, §1956.039)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Notice of Restrictions. (Occ. Code, §1956.104)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Operating After Expiration of Registration (§1956.021; §1956.023(d))	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Misrepresentation of Registration Status When Expired (§1956.021; §1956.023(d))	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Catalytic Converter Requirements. (Occ. Code §1956.0321; §1956.033; §1956.034; §1956.123--.125)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Training				
Texas Metals Program Recycler Training. (37 TAC §36.34)	Reprimand	Admin Penalty up to $250	Suspension 60 days	Revocation
Payment				
Payment by Metal Recycling Entity. (37 TAC §36.35, Occ. Code §1702.0381, or §1956.038(b)).	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Cash Transaction Card. (Occ. Code, §1956.0382)	Admin Penalty up to $500	Admin Penalty up to $1000	Suspension 60 days	Revocation
Cash Transaction Card. (37 TAC §36.37)	Reprimand	Admin Penalty up to $500	Admin Penalty up to $1000	Revocation
Solicitation				
Solicitation of Purchase at Prohibited Location. (Occ. Code, §1956.203)	Admin Penalty up to $250	Admin Penalty up to $500	Suspension 60 days	Revocation

Please note: For violations not listed above, the department may impose a penalty not to exceed $500 for the first violation, and $1,000 for the second violation within the preceding one-year period, under the authority of Rule 36.60(a).

Figure: 37 TAC §439.19(b)

Examination	Section	Number of Exam Questions	Maximum Possible Number of Pilot Questions	Time Allowed
Combined Basic Structure FP	Hazardous Materials Awareness	25		
	Hazardous Materials Operations	25		
	Firefighter I	100		
	Firefighter II	75		
	TOTAL	225	25	4.5 Hours
Basic Fire Inspector	Inspector I	50		
	Inspector II	50		
	TOTAL	100	15	2.0 Hours
Sectional Exams	Hazardous Materials Awareness	50	5	1.0 Hour
	Hazardous Materials Operations	50	5	1.0 Hour
	Firefighter I	100	10	2.0 Hour
	Firefighter II	75	8	1.5 Hours
	Inspector I	**50**	**5**	**1.0 Hours**
	Inspector II	**50**	**5**	**1.0 Hours**
FOR ALL OTHER EXAMINATIONS, SECTIONAL EXAMINATIONS, AND RETESTS				
	Recommended Hours	Number of Exam Questions	Maximum Possible Number of Pilot Questions	Time Allowed
IF THE RECOMMENDED HOURS FOR THE CURRICULUM OR SECTION IS:	Less than 30	**25** [~~50~~]	3	**30 Minutes [**~~1.0 hour~~**]**
	31 to 100	50	5	1.0 Hour
	101 to 200	75	8	1.5 Hours
	201 to 300	100	10	2.0 Hours
	301 to 400	125	13	2.5 Hours
	401 or More	150	15	3.0 Hours

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of 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 09/04/23 - 09/10/23 is 18% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/04/23 - 09/10/23 is 18% for commercial[2] credit.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202303212
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 30, 2023

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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 **October 9, 2023.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 9, 2023.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Ascension Seton; DOCKET NUMBER: 2022-1067-PST-E; IDENTIFIER: RN100599356; LOCATION: Austin, Travis County; TYPE OF FACILITY: emergency generator; RULES VIOLATED: 30 TAC §334.48(e)(1) and §334.50(b)(2)(B) and TWC, §26.3475(b) and (c)(1), by failing to provide release detection for the suction piping associated with the underground storage tank (UST) system, and failing to conduct the annual operability testing of release detection equipment to ensure it is operating properly; 30 TAC §334.48(g)(1)(A)(ii) and (B) and TWC, §26.3475(c)(2), by failing to test the spill prevention equipment at least once every three years to ensure the equipment is liquid tight, and failing to inspect the overfill prevention equipment for operability at least once every three years; and 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection to all metal components of the UST system designed or used to convey, contain, or store regulated substances; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: BC Humble Enterprises, LLC; DOCKET NUMBER: 2021-1500-MWD-E; IDENTIFIER: RN101527513; LOCATION: Humble, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §217.7(b)(3)(B) and §305.125(1) and (8), and Texas Pollutant Discharge Elimination System Permit Number WQ0014874001, Permit Conditions Number 4.c, by failing to apply for an amendment; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Brookshire Brothers, Incorporated dba Brookshire Brothers 81; DOCKET NUMBER: 2022-1490-PST-E; IDENTIFIER: RN107147688; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(B) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed on or after January 1, 2009; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Galveston; DOCKET NUMBER: 2023-0267-PWS-E; IDENTIFIER: RN101274249; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(e)(5), by failing to have a minimum nine-foot separation distance from a potable waterline to a wastewater main manhole or where the nine-foot separation distance cannot be achieved, and failing to encase the potable waterline in a joint of at least 150 pounds per square inch pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $17,250; ENFORCEMENT COORDINATOR: Ashley Lemke, (512)

239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of Rose City; DOCKET NUMBER: 2022-0203-MWD-E; IDENTIFIER: RN109046458; LOCATION: Vidor, Orange County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.65 and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: $15,300; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Higbie Ventures of Texas, Incorporated; DOCKET NUMBER: 2022-0340-WQ-E; IDENTIFIER: RN111214474; LOCATION: Kingwood, Harris County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR1554ET, Part III, Section F.2.(c)i.(B), by failing to install minimum controls such as silt fences, vegetative buffer strips, or equivalent sediment controls for all down-slope boundaries at the site; 30 TAC 305.125(1), and TPDES General Permit Number TXR1554ET, Part III, Section F.6(a)(c), by failing to maintain best management practices in effective operating condition; and 30 TAC §305.125(1), and TPDES General Permit Number TXR1554ET, Part III, Section F.6.(d), by failing to remove accumulations of sediment at a frequency that minimizes off-site impacts; PENALTY: $7,988; ENFORCEMENT COORDINATOR: Monica Larina, (512) 239-0184; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: J and S Materials, LLC; DOCKET NUMBER: 2023-0418-AIR-E; IDENTIFIER: RN110872991; LOCATION: San Antonio, Comal County; TYPE OF FACILITY: permanent rock and concrete crushing plant; RULES VIOLATED: 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 159907, Air Quality Standard Permit for Permanent Rock and Concrete Crushers, General Conditions Number 2 and General Requirements Number (1)(B), and Texas Health and Safety Code, §382.085(b) , by failing to comply with all representations with regard to construction plans, operating procedures, pollution control methods, and maximum emission rates in any registration for a standard permit; PENALTY: $11,812; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(8) COMPANY: James L. Sullivan and Anytime Septic Solutions LLC; DOCKET NUMBER: 2023-0065-SLG-E; IDENTIFIER: RN110596814; LOCATION: Saratoga, Polk County; TYPE OF FACILITY: sludge transporter; RULES VIOLATED: 30 TAC §312.44(h)(1) and Domestic Septage Registration Number 711028, Section V.D. Regulated Management Conditions Number 9A, by failing to apply domestic septage uniformly over the surface of the land; and 30 TAC §312.64(m) and Domestic Septage Registration Number 711028, Section V.D. Regulated Management Conditions Number 11, by failing to restrict public access to a surface disposal site; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5865; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Kopperl ISD; DOCKET NUMBER: 2022-1567-MWD-E; IDENTIFIER: RN101279396; LOCATION: Kopperl, Bosque County; TYPE OF FACILITY: sludge plant; RULES VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit Number WQ0013982001, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $1,350; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Mako, LLC; DOCKET NUMBER: 2022-1287-WR-E; IDENTIFIER: RN111369286; LOCATION: La Marque, Galveston County; TYPE OF FACILITY: residential development; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.121, by failing to obtain authorization prior to diverting, impounding, storing, taking, or using state water; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: N2PR LLC dba Food Store Lucky 7; DOCKET NUMBER: 2022-1250-PST-E; IDENTIFIER: RN102344892; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Rivers Edge Interests, Ltd.; DOCKET NUMBER: 2022-0141-WQ-E; IDENTIFIER: RN110901360; 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 TXR1597AT, Part III, Section F.6(a), (b), (c), and (d), by failing to install and maintain best management practices at the site which resulted in a discharge of pollutants into or adjacent to any water in the state; PENALTY: $16,875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Stratford at Bulverde Village Homeowners Association; DOCKET NUMBER: 2022-0346-EAQ-E; IDENTIFIER: RN105323612; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: residential common grounds; RULES VIOLATED: 30 TAC §213.4(k) and Edwards Aquifer Protection Plan Number 13-07081401, Standard Conditions Number 15, by failing to maintain best management practices and measures to prevent pollutants from entering sensitive features located within the Edwards Aquifer Recharge Zone; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(14) COMPANY: WS CAMPUS HOLDINGS, LLC; DOCKET NUMBER: 2022-0388-EAQ-E; IDENTIFIER: RN111359683; LOCATION: Florence, Williamson County; TYPE OF FACILITY: new construction; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-202303179
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 29, 2023

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Enforcement Orders

An agreed order was adopted regarding SKMD BUSINESS LLC dba Calder Food Mart, Docket No. 2021-1024-PST-E on August 29, 2023 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Amy Lane, 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 Southwest Texas Commercial Properties LLC dba Star Stop 430530, Docket No. 2021-1497-PST-E on August 29, 2023 assessing $5,838 in administrative penalties with $1,167 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, 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 HOESMAN INDUSTRIES, INC. dba Capital Concrete Products, Docket No. 2021-1520-MLM-E on August 29, 2023 assessing $3,550 in administrative penalties with $710 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Buda, Docket No. 2022-0007-EAQ-E on August 29, 2023 assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CRYSTAL SPRINGS WATER CO., INC., Docket No. 2022-0083-PWS-E on August 29, 2023 assessing $4,638 in administrative penalties with $927 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.

An agreed order was adopted regarding GREEN SPRINGS WATER SUPPLY CORPORATION, Docket No. 2022-0114-PWS-E on August 29, 2023 assessing $4,040 in administrative penalties with $808 deferred. Information concerning any aspect of this order may be obtained by contacting Tessa Bond, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HWCC No. 3, LLC, Docket No. 2022-0208-PWS-E on August 29, 2023 assessing $450 in administrative penalties with $90 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PURE WATER SUPPLY CORPORATION, Docket No. 2022-0275-PWS-E on August 29, 2023 assessing $5,800 in administrative penalties with $1,160 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 DFW Golden Heights Business Park Owners Condominium Association, Inc., Docket No. 2022-0549-PWS-E on August 29, 2023 assessing $4,175 in administrative penalties with $835 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Caston, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas

An agreed order was adopted regarding City of Sabinal, Docket No. 2022-0615-PWS-E on August 29, 2023 assessing $350 in administrative penalties with $70 deferred. Information concerning any aspect of this order may be obtained by contacting Kaisie Hubschmitt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ELSA INVESTMENT LLC dba LaMexico 6, Docket No. 2022-0839-PST-E on August 29, 2023 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hedley, Docket No. 2022-1348-UTL-E on August 29, 2023 assessing $450 in administrative penalties with $90 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 FOREST HILL NO. TWO WATER SUPPLY CORPORATION, Docket No. 2022-1389-UTL-E on August 29, 2023 assessing $500 in administrative penalties with $100 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.

An agreed order was adopted regarding Southwestern Bell Telephone Company, Docket No. 2022-1448-PST-E on August 29, 2023 assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Amy Lane, 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 Boling Municipal Water District, Docket No. 2022-1485-UTL-E on August 29, 2023 assessing $470 in administrative penalties with $94 deferred. Information concerning any aspect of this order may be obtained by contacting Daphne Greene, 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 Old Town Water Supply Corporation, Ben Adams dba Old Town Water Supply Corporation, Terry Adams dba Old Town Water Supply Corporation, and David Hicks dba Old Town Water Supply Corporation, Docket No. 2022-1512-UTL-E on August 29, 2023 assessing $500 in administrative penalties with $100 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.

An agreed order was adopted regarding Deyma Davila dba Dey's RV and Mobile Park, Docket No. 2023-0186-UTL-E on August 29, 2023 assessing $875 in administrative penalties with $175 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Caston, 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 Wood Island Homeowners Association Water System, Docket No. 2023-0223-UTL-E on August 29, 2023 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Tessa Bond, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North San Saba Water Supply Corporation, Docket No. 2023-0268-PWS-E on August 29, 2023 assessing $5,325 in administrative penalties with $1,065 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 field citation was adopted regarding Kinney County, Docket No. 2023-0287-WR-E on August 29, 2023 assessing $350 in administrative penalties. Information concerning any aspect of this citation 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 BRAZOS VALLEY SEPTIC & WATER, INC., Docket No. 2023-0463-UTL-E on August 29, 2023 assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Seth Ward Water Supply Corporation, Docket No. 2023-0464-UTL-E on August 29, 2023 assessing $600 in administrative penalties with $120 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SEABOARD WATER SUPPLY CORPORATION, Docket No. 2023-0465-UTL-E on August 29, 2023 assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding W4-A Holdings LLC, Docket No. 2023-0762-WQ-E on August 29, 2023 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Gulf Coast Fiber Services LLC, Docket No. 2023-0777-WR-E on August 29, 2023 assessing $350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting John Thibodeaux, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Moss, Terrance Deon, Docket No. 2023-0803-WOC-E on August 29, 2023 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Daphne Greene, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202303210

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 30, 2023

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Notice of District Petition

Notice issued August 28, 2023

TCEQ Internal Control No. D-05022023-003; AALV 153 Jarrell, LLC and AALV 75 Georgetown, LLC ("Petitioners") filed a petition for creation of Theon Ranches Municipal Utility District No. 2 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article III, Section 52 and Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners own of a majority of the assessed value of the land to be included in the proposed District; (2) there is one lienholder on the property to be included in the proposed District, and the aforementioned entity has consented to creation of the District and inclusion of the land in the District; (3) the proposed District will contain approximately 229.301 acres of land, located entirely within Williamson County, Texas; and (4) none of the land to be included in the proposed District is within the corporate limits or extraterritorial jurisdiction of any municipality. The petition further states that the proposed District will (1) purchase, construct, acquire, provide, operate, extend, repair, maintain or improve inside or outside of its boundaries, any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial and commercial purposes, (2) collect, transport, process, dispose of and control domestic, industrial and commercial wastes, (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District, (4) construct, maintain, improve and operate graveled or paved roads or turnpikes that serve or are intended to serve as an arterial or main feeder roads, or works, facilitates, or improvements in aid of those roads or turnpikes inside or outside the boundaries of the District to the extent authorized by Article III, Section 52 of the Texas Constitution, purchase, (5) construct, acquire, provide, operate, maintain, repair, improve, extend and develop park and recreational facilities for the inhabitants of the District, and (6) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $65,080,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case

hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202303207
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 30, 2023

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Notice of District Petition

Notice issued August 28, 2023

TCEQ Internal Control No. D-03032023-007; Kendall County Water Control and Improvement District No. 2 (the "District") filed an application with the Texas Commission on Environmental Quality (TCEQ) for authority to levy a revised impact fee of $36,935 per connection (LUE) within the District's service area. The District files this application under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code Chapter 293, and the procedural rules of the TCEQ. The purpose of impact fees is to generate revenue to recover the costs of capital improvements or facility expansions made necessary by and attributable to serving new development in the District's service area. At the direction of the District, a registered engineer has prepared a capital improvements plan for the system that identifies the capital improvements or facility expansions and their costs for which the impact fees will be assessed. The impact fee application and supporting information are available for inspection and copying during regular business hours in the Districts Section of the Water Supply Division, Third Floor of Building F (in the TCEQ Park 35 Office Complex located between Yager and Braker lanes on North IH-35), 12100 Park 35 Circle, Austin, Texas 78753. A copy of the impact fee application and supporting information, as well as the capital improvements plan, is available for inspection and copying at the District's office during regular business hours.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202303208
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 30, 2023

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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 **October 9, 2023.** 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 October 9, 2023.** 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 DO shall be submitted to the commission in **writing.**

(1) COMPANY: A & K ENTERPRISES, INC. dba Country Food Store; DOCKET NUMBER: 2021-0549-PWS-E; TCEQ ID NUMBER: RN101183861; LOCATION: 9815 State Highway 60 South, Lane City, Wharton County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.45(d)(2)(A) and §290.110(b)(2), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter free chlorine in the water entering the distribution system; 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 1 that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, and elevated and located so as to minimize the drawing of contaminants into the well; 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 §290.41(c)(3)(O), by failing to protect all well units with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house to exclude the possible contamination or damage to the facilities by trespassers; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay the annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 92410032 for Fiscal Year 2021; PENALTY: $5,775; STAFF ATTORNEY: Benjamin Pence, Litigation, MC 175, (512) 239-2157; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: SOFIYASHANU ENTERPRISES INC dba 1604 Corner Store; DOCKET NUMBER: 2021-0964-PST-E; TCEQ ID NUMBER: RN101436475; LOCATION: 9100 West Loop 1604 North, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and 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 in a manner which will detect a release at a frequency of at least once every 30 days; and 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; PENALTY: $3,869; STAFF ATTORNEY: Katherine Keithley, Litigation, MC 175, (512) 239-0620; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202303190
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: August 29, 2023

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Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill

Notice issued on August 25, 2023

Proposed Permit No. 62050

Application. The City of Waco, P.O. Box 2570, Waco, Texas 76702, has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62050). The proposed development concerns a tract of land of approximately 43.482 acres located at South University Parks Drive, Waco, Texas 76712. The proposed construction includes an enclosed building with a total footprint of about 21,600 square feet, a possible future building expansion of an additional 14,400 square feet and associated paved access drives and parking for trucks and vehicles. This development permit, if approved, authorizes the construction of buildings and associated features over a closed municipal solid waste landfill that the applicant proposes to use as a future municipal solid waste transfer station. The facility cannot accept waste until a separate application for a Type V Municipal Solid Waste Transfer Station is approved by TCEQ. The development permit application is available for viewing and copying at Waco-McLennan County Library, 1717 Austin Avenue, Waco, Texas 76701, and may be viewed online at https://www.waco-texas.com/Departments/Solid-Waste-Recycling-Services/Landfill-Planning/Transfer-Station-Permitting-Process. The following link to an electronic map of the site or facility general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/8PfC00. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website

at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from the City of Waco at the address stated above or by calling the applicant's representative Mr. Jeff Arrington P.E., at (817) 358-6111.

TRD-202303206
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 30, 2023

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Notice of Public Meeting Air Permit (NORI) Renewal Permit Number 50114

APPLICATION. Martin Marietta Materials Southwest, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Air Quality Permit Number 50114, which would authorize continued operation of a concrete crushing plant located at 5001 Gasmer Drive, Houston, Harris County, Texas 77035. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en espanol está disponible en https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits-pendingpermit-apps. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-95.467539,29.647513&level=13. The existing facility is authorized to emit the following air contaminants: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide. This application was submitted to the TCEQ on May 4, 2023.

The executive director has determined the application is administratively complete and will conduct a technical review of the application. Information in the application indicates that this permit renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. **The TCEQ may act on this application without seeking further public comment or providing an opportunity for a contested case hearing if certain criteria are met.**

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, September 28, 2023, at 7:00 p.m.

Community Collective for Houston

12401 S. Post Oak Road

Houston, Texas 77045

INFORMATION. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the link, enter the permit number at the top of this form.

The application will be available for viewing and copying at the TCEQ central office, TCEQ Houston regional office, and the Vinson Neighborhood Library, inside H. Clarke Multi-Service Center, 3810 West Fuqua Street, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review in the Houston regional office of the TCEQ. Further information may also be obtained from Martin Marietta Materials Southwest, LLC, 1503 Lyndon B. Johnson Freeway Suite 400, Dallas, Texas 75234-6007 or by calling Ms. Monique Wells, CIC Environmental, LLC at (512) 292-4314.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: August 24, 2023

TRD-202303204
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 30, 2023

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016092001

APPLICATION. Treasure Island Laguna Azure LLC, 2101 Cedar Springs Road, Suite 700, Dallas, Texas 75201, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016092001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. TCEQ received this application on January 18, 2022.

The facility will be located approximately 0.81 of a mile northeast of the intersection of Farmington Road and Hodgins Road, in Grayson County, Texas 75495. The treated effluent will be discharged to West Prong Whites Creek, thence to Whites Creek, thence to East Fork Trinity River above Lake Lavon, thence to Lake Lavon in Segment No.

0821 of the Trinity River Basin. The unclassified receiving water use is high aquatic life use for West Prong Whites Creek. The designated uses for Segment No. 0821 are primary contact recreation, public water supply, and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in West Prong Whites Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-96.631606%2C33.455858&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, October 9, 2023, at 7:00 p.m.

Days Inn by Wyndham Sherman, "Dallas" Meeting Room

3605 South US Highway 75

Sherman, Texas 75090

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Van Alstyne Public Library, 151 West Cooper Street, Van Alstyne, Texas. Further information may also be obtained from Treasure Island Laguna Azure LLC at the address stated above or by calling Mr. Jonathan Nguyen, Quiddity Engineering, at (512) 685-5156.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: August 24, 2023

TRD-202303205
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 30, 2023

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Notice of Public Meeting New Permit No. WQ0016276001

APPLICATION. The Peninsula RV Resort LLC, P.O. Box 490, Breckenridge, Texas 76424, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016276001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. TCEQ received this application on December 16, 2022.

The facility will be located approximately 1.53 miles northwest of the intersection of County Road 315 and Farm-to-Market Road 3099, in Stephens County, Texas 76424. The treated effluent will be discharged directly to Hubbard Creek Reservoir in Segment No. 1233 of the Brazos River Basin. The designated uses for Segment No. 1233 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Hubbard Creek Reservoir, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-98.950555,32.808333&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-no-

tices. El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, October 12, 2023 at 7:00 p.m.

Bailey Auditorium

500 W. Lindsey

Breckenridge, Texas 76424

INFORMATION. Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at https://www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Breckenridge Library, 209 North Breckenridge Avenue, Breckenridge, Texas. Further information may also be obtained from The Peninsula RV Resort LLC at the address stated above or by calling Mrs. Brook Hatchett at (254) 246-0389.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: August 29, 2023

TRD-202303203
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 30, 2023

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Notice of Public Meeting Permit Number 21258

APPLICATION. Texas Materials Group, Inc., has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Air Quality Permit Number 21258, which would authorize continued operation of a hot mix asphalt plant located at 5303 Navigation Boulevard, Houston, Harris County, Texas 77011.

AVISO DE IDIOMA ALTERNATIVO. El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/air/newsourcereview/airpermits-pendingpermit-apps.

This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-95.31667,29.75417&level=13. The existing facility is authorized to emit the following air contaminants: carbon monoxide, hazardous air pollutants, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, lead and sulfur dioxide. This application was submitted to the TCEQ on May 22, 2023.

The executive director has determined the application is administratively complete and will conduct a technical review of the application. Information in the application indicates that this permit renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. **The TCEQ may act on this application without seeking further public comment or providing an opportunity for a contested case hearing if certain criteria are met.**

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, October 2, 2023 at 7:00 p.m.

Hampton Inn Houston I-10 East

10505 East Freeway

Houston, Texas 77029

INFORMATION. Members of the public are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at

https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the link, enter the permit number at the top of this form.

The application will be available for viewing and copying at the TCEQ central office, TCEQ Houston regional office, and the Stanaker Neighborhood Library, 611 Staff Sergeant Macario Garcia Drive, Houston, Harris County. The facility's compliance file, if any exists, is available for public review in the Houston regional office of the TCEQ. Further information may also be obtained from Texas Materials Group, Inc., P.O. Box 1987, Baytown, Texas 77522-1987 or by calling Mr. James Wedemeier, Senior Consultant, Trinity Consultants, at (713) 955-1223.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Notice Issuance Date: August 29, 2023

TRD-202303209
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 30, 2023

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Texas Health and Human Services Commission

Public Notice: Adult Vaccine Services

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 22-0032 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The Texas Health and Human Services Commission (HHSC) proposes amendments to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act to repeal language explicitly excluding vaccines specific for travel to or from foreign countries. The Social Security Act was amended to provide that, effective October 1, 2023, state Medicaid programs must cover items and services described in Section 1905(a)(13)(B) of the Act, including adult vaccines approved by the Food and Drug Administration and recommended by the Advisory Committee on Immunization Practices (ACIP) and their administration. On June 27, 2023, the Centers for Medicare and Medicaid Services issued a letter interpreting the reference to ACIP recommendations in Section 1905(a)(13)(B) to include any category of ACIP vaccine recommendations. Because of this interpretation, Medicaid programs must cover all adult vaccines recommended by ACIP, including those recommended solely for occupation or travel to or from foreign countries.

The proposed amendment is effective October 1, 2023.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $9,505 for [the remainder of] federal fiscal year (FFY) 2024, consisting of $0 cost savings in federal funds and $0 cost savings in state general revenue. For FFY 2025, the estimated additional annual expenditure is $9,404 consisting of $0 cost savings in federal funds and $0 cost savings in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-202303143
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 24, 2023

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Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments will be effective October 1, 2023.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Early and Periodic Screening, Diagnostic and Treatment Services; and

Physicians and Other Practitioners

The proposed amendment is estimated to result in an annual aggregate expenditure of $29,562 for federal fiscal year (FFY) 2023, consisting of $17,891 in federal funds and $11,671 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $31,912 consisting of $19,307 in federal funds and $12,605 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is $31,571 consisting of $19,100 in federal funds and $12,471 in state general revenue.

Further detail on specific reimbursement rates and percentage changes will be made available on the HHSC Provider Finance website under the proposed effective date at: https://pfd.hhs.texas.gov/rate-packets.

Rate Hearing

A rate hearing will be conducted online in September or October 2023, to address these updates. Once available, information about the proposed rate changes and the hearing will be published in a subsequent issue of the *Texas Register* at http://www.sos.state.tx.us/texreg/index.shtml and the HHS Meetings & Events webpage at https://www.hhs.texas.gov/about/meetings-events.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Nicole Hotchkiss, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDAcuteCare@hhs.texas.gov

Preferred Communication.

For quickest response please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202303197
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 30, 2023

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Worth National Title Insurance Company, a domestic title company. The home office is in Fort Worth, Texas.

Application for incorporation in the state of Texas for Takaful Insurance Reciprocal Exchange, a domestic reciprocal. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202303199
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: August 30, 2023

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Texas Department of Licensing and Regulation

Public Notice - Criminal Conviction Guidelines for the Off-Highway Vehicle (ATV) Operator Safety Program

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting held August 1, 2023, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003 (28 TexReg 11018) to include the Off-Highway Vehicle (ATV) Operator Safety program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

The Texas Legislature enacted Senate Bill 616 (S.B. 616), 86th Legislature, Regular Session (2019), which transferred oversight of the Motorcycle and ATV Operator Safety program from the Texas Department of Public Safety to the Texas Department of Licensing and Regulation.

The Criminal Conviction Guidelines for the ATV Operator Safety program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the Criminal Conviction Guidelines to the Commission on August 1, 2023, and were adopted as recommended.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by email at enforcement@tdlr.texas.gov to obtain a copy of the complete guidelines.

Instructor

Crimes involving fraud, forgery, bribery, or tampering with records.

Reasons:

1. Inducing or countenancing fraud or a fraudulent practice by a person applying for a driver's license or permit is grounds for denial of a license. See Texas Transportation Code §551A.017.

2. Licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service.

3. A person with the predisposition and experience in misrepresentations of fact in the business setting would have the opportunity to engage in further similar conduct.

4. Licensees interact with adults and children in an instructor/student role. Licensees will often be involved in assessing the performance of students. Licensees would have the opportunity to prepare and submit false documents or sell false documents pertaining to the coursework or qualifications of students.

5. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving deceptive trade practices.

Reasons:

1. Licensees may be in a position to advertise or otherwise make representations about services, products, and other matters related to the need for service.

2. Licensees may potentially be involved in the billing of clients.

3. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving the operation of a motor vehicle, including driving while intoxicated, intoxication assault, intoxication manslaughter, reckless driving, and fleeing or evading a police officer.

Reasons:

1. Licensees interact with adults and children in an instructor/student role. Licensees teach proper driving. Persons with a history of operating a motor vehicle in a dangerous manner would not be appropriate persons to teach proper driving.

2. Criminal activity of this type reveals a lack of regard for the safety of others.

3. A person with a predisposition for criminal activity of this type would pose a risk to the public.

4. The instructor license would provide the opportunity to engage in or encourage others to engage in further similar conduct.

Crimes involving children as victims.

Reasons:

1. Licensees interact with children in an instructor/student role. Individuals who have committed crimes involving children as victims would pose a potential danger.

2. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Program Sponsor

Crimes involving fraud, forgery, bribery, or tampering with records.

Reasons:

1. Inducing or countenancing fraud or a fraudulent practice by a person applying for a driver's license or permit is grounds for denial of a license. See Texas Transportation Code §551A.017.

2. Licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service.

3. A person with the predisposition and experience in misrepresentations of fact in the business setting would have the opportunity to engage in further similar conduct.

4. Licensees interact with adults and children in a school/student role. Licensees would have the opportunity to prepare and submit false documents or sell false documents pertaining to the coursework or qualifications of students.

5. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving deceptive trade practices.

Reasons:

1. Licensees may be in a position to advertise or otherwise make representations about services, products, and other matters related to the need for service.

2. Licensees may potentially be involved in the billing of clients.

3. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

TRD-202303127
Mike Arismendez, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: August 23, 2023

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Texas Lottery Commission

Scratch Ticket Game Number 2531 "HOLIDAY LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2531 is "HOLIDAY LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2531 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2531.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: ACORN SYMBOL, BELLS SYMBOL, BOW SYMBOL, CANDLE SYMBOL, CANDY CANE SYMBOL, CARD SYMBOL, CARDINAL SYMBOL, CHIMNEY SYMBOL, DRUM SYMBOL, ELF SYMBOL, FIREPLACE SYMBOL, GIFT BOX SYMBOL, GINGERBREAD SYMBOL, HAT SYMBOL, HOLLY SYMBOL, ICE SKATE SYMBOL, ICICLES SYMBOL, LIGHTS SYMBOL, MILK SYMBOL, MITTEN SYMBOL, ORNAMENT SYMBOL, REINDEER SYMBOL, SCARF SYMBOL, SHOVEL SYMBOL, SLED SYMBOL, SNOW GLOBE SYMBOL, SNOWMAN SYMBOL, STAR SYMBOL, STOCKING SYMBOL, SWEATER SYMBOL, TREE SYMBOL and WREATH SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2531 - 1.2D

PLAY SYMBOL	CAPTION
ACORN SYMBOL	ACORN
BELLS SYMBOL	BELLS
BOW SYMBOL	BOW
CANDLE SYMBOL	CANDLE
CANDY CANE SYMBOL	CANDY CANE
CARD SYMBOL	CARD
CARDINAL SYMBOL	CARDINAL
CHIMNEY SYMBOL	CHIMNEY
DRUM SYMBOL	DRUM
ELF SYMBOL	ELF
FIREPLACE SYMBOL	FIREPLACE
GIFT BOX SYMBOL	GIFT BOX
GINGERBREAD SYMBOL	GINGERBREAD
HAT SYMBOL	HAT
HOLLY SYMBOL	HOLLY
ICE SKATE SYMBOL	ICE SKATE
ICICLES SYMBOL	ICICLES
LIGHTS SYMBOL	LIGHTS
MILK SYMBOL	MILK
MITTEN SYMBOL	MITTEN
ORNAMENT SYMBOL	ORNAMENT
REINDEER SYMBOL	REINDEER
SCARF SYMBOL	SCARF
SHOVEL SYMBOL	SHOVEL
SLED SYMBOL	SLED

SNOW GLOBE SYMBOL	SNOW GLOBE
SNOWMAN SYMBOL	SNOWMAN
STAR SYMBOL	STAR
STOCKING SYMBOL	STOCKING
SWEATER SYMBOL	SWEATER
TREE SYMBOL	TREE
WREATH SYMBOL	WREATH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2531), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2531-0000001-001.

H. Pack - A Pack of the "HOLIDAY LOTERIA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "HOLIDAY LOTERIA" Scratch Ticket Game No. 2531.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "HOLIDAY LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose thirty (30) Play Symbols. 1) The player completely scratches the CALLER'S CARD to reveal 14 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 14 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal, el jugador gana el premio para esa línea. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly thirty (30) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly thirty (30) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the thirty (30) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the thirty (30) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to three (3) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

C. There will be no matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. At least eight (8), but no more than twelve (12), CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a symbol on the PLAYBOARD/TABLA DE JUEGO play area on a Ticket.

E. No matching Play Symbols are allowed on the PLAYBOARD/TABLA DE JUEGO play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY LOTERIA" Scratch Ticket Game prize of $3.00, $5.00, $8.00, $10.00, $15.00, $18.00, $20.00, $30.00, $33.00, $50.00, $80.00 or $250, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00 or $250 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY LOTERIA" Scratch Ticket Game prize of $3,000 or $50,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY LOTERIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "HOLIDAY

LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "HOLIDAY LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2531. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2531 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3.00	560,000	10.71
$5.00	160,000	37.50
$8.00	120,000	50.00
$10.00	120,000	50.00
$15.00	120,000	50.00
$18.00	80,000	75.00
$20.00	80,000	75.00
$30.00	35,000	171.43
$33.00	10,000	600.00
$50.00	5,000	1,200.00
$80.00	2,800	2,142.86
$250	750	8,000.00
$3,000	20	300,000.00
$50,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.64. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2531 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2531, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202303191
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 29, 2023

♦ ♦ ♦

Supreme Court of Texas

Amended Order Giving Preliminary Approval of Amendments to Canons 3B, 5, and 6 of the Texas Code of Judicial Conduct and the Procedural Rules for the Removal or Retirement

of Judges, Now Titled the Procedural Rules for the State Commission on Judicial Conduct

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the September 8, 2023, issue of the Texas Register.)

TRD-202303183
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 29, 2023

♦ ♦ ♦

Order Approving Revised Protective Order Forms

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the September 8, 2023, issue of the Texas Register.)

TRD-202303185
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 29, 2023

♦ ♦ ♦

Preliminary Approval of Amendments to Texas Rule of Judicial Administration 7

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," this order is not included in the print version of the Texas Register. The order is available in the on-line version of the September 8, 2023, issue of the Texas Register.)

TRD-202303188
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 29, 2023

♦ ♦ ♦

Preliminary Approval of Amendments to Texas Rules of Appellate Procedure 24.1 and 24.2

Supreme Court of Texas

Misc. Docket No. 23-9062

Preliminary Approval of Amendments to Texas Rules of Appellate Procedure 24.1 and 24.2

ORDERED that:

1. The Court invites public comments on proposed amendments to Texas Rules of Appellate Procedure 24.1 and 24.2. All the proposed amendments, except the amendments to Texas Rule of Appellate Procedure 24.1(b)(2), are in accordance with the Act of May 17, 2023, 88th Leg., R.S., ch. 763 (H.B. 4381, codified at TEX. CIV. PRAC. and REM. CODE § 52.007).

2. Comments regarding the proposed amendments should be submitted in writing to rulescomments@txcourts.gov by December 1, 2023.

3. The Court will issue an order finalizing the rule after the close of the comment period. The Court may change the amendments in response to public comments.

4. The Court expects the amendments to Texas Rule of Appellate Procedure 24.1(b)(2) to take effect on January 1, 2024.

5. To effectuate the Act of May 17, 2023, 88th Leg., R.S., ch. 763, all the other amendments proposed in this Order are effective September 1, 2023. Those amendments apply only to a civil action commenced on or after September 1, 2024.

6. The Clerk is directed to:

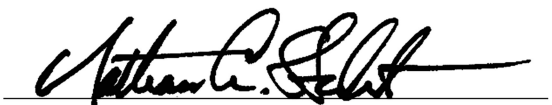
   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

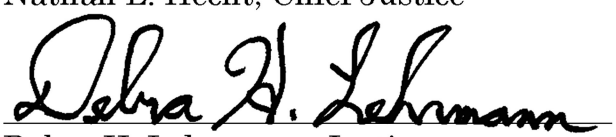
   c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of this Order for publication in the *Texas Register*.

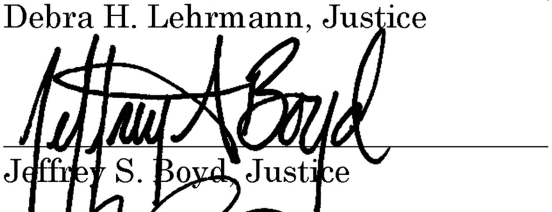
Dated: August 25, 2023.



Nathan L. Hecht, Chief Justice

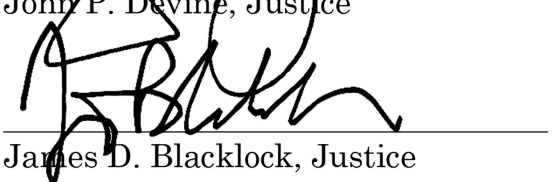


Debra H. Lehrmann, Justice

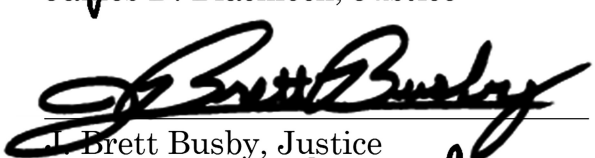


Jeffrey S. Boyd, Justice

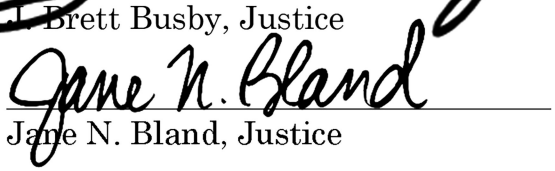
John P. Devine, Justice



James D. Blacklock, Justice

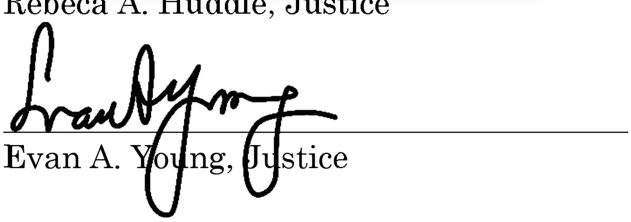


J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 24. Suspension of Enforcement of Judgment Pending Appeal in Civil Cases

24.1. Suspension of Enforcement

(a) *Methods.* Unless the law or these rules provide otherwise, a judgment debtor may supersede the judgment by:

(1) filing with the trial court clerk a written agreement with the judgment creditor for suspending enforcement of the judgment;

(2) filing with the trial court clerk a good and sufficient bond;

(3) making a deposit with the trial court clerk in lieu of a bond; or

(4) providing alternate security under Rule 24.2(e) or ordered by the court.

(b) *Bonds.*

(1) A bond must be:

(A) in the amount required by 24.2;

(B) payable to the judgment creditor;

(C) signed by the judgment debtor or the debtor's agent;

(D) signed by a sufficient surety or sureties as obligors; and

(E) conditioned as required by (d).

(2) ~~To be effective a bond must be approved by the trial court clerk~~A bond is effective upon filing. On motion of any party, the trial court will review the bond.

(c) *Deposit in Lieu of Bond.*

(1) Types of Deposits. Instead of filing a surety bond, a party may deposit with the trial court clerk:

(A) cash;

(B) a cashier's check payable to the clerk, drawn on any federally insured and federally or state-chartered bank or savings-and-loan association; or

(C) with leave of court, a negotiable obligation of the federal government or of any federally insured and federally or state-chartered bank or savings-and-loan association.

(2) Amount of Deposit. The deposit must be in the amount required by 24.2.

(3) Clerk's Duties; Interest. The clerk must promptly deposit any cash or a cashier's check in accordance with law. The clerk must hold the deposit until the conditions of liability in (d) are extinguished. The clerk must then release any remaining funds in the deposit to the judgment debtor.

(d) *Conditions of Liability.* The surety or sureties on a bond, any deposit in lieu of a bond, or any alternate security under Rule 24.2(e) or ordered by the court is subject to liability for all damages and costs that may be awarded against the debtor — up to the amount of the bond, deposit, or security — if:

(1) the debtor does not perfect an appeal or the debtor's appeal is dismissed, and the debtor does not perform the trial court's judgment;

(2) the debtor does not perform an adverse judgment final on appeal; or

(3) the judgment is for the recovery of an interest in real or personal property, and the debtor does not pay the creditor the value of the property interest's rent or revenue during the pendency of the appeal.

(di) *Orders of Trial Court.* The trial court may make any order necessary to adequately protect the judgment creditor against loss or damage that the appeal might cause.

(dii) *Effect of Supersedeas.* Enforcement of a judgment must be suspended if the judgment is superseded. Enforcement begun before the judgment is superseded must cease when the judgment is superseded. If execution has been issued, the clerk will promptly issue a writ of supersedeas.

24.2. Amount of Bond, Deposit, or Security

(a) *Type of Judgment.*

(1) For Recovery of Money. When the judgment is for money, the amount of the bond, deposit, or security must equal the sum of compensatory damages awarded in the judgment, interest for the estimated duration of the appeal, and costs awarded in the judgment. But the amount must not exceed the lesser of:

(A) 50 percent of the judgment debtor's current net worth; or

(B) 25 million dollars.

(2) For Recovery of Property. When the judgment is for the recovery of an interest in real or personal property, the trial court will determine the type of security that the judgment debtor must post. The amount of that security must be at least:

(A) the value of the property interest's rent or revenue, if the property interest is real; or

(B) the value of the property interest on the date when the court rendered judgment, if the property interest is personal.

(3) Other Judgment. When the judgment is for something other than money or an interest in property, the trial court must set the amount and type of security that the judgment debtor must post. The security must adequately protect the judgment creditor against loss or damage that the appeal might cause. But the trial court may decline to permit the judgment to be superseded if the judgment creditor posts security ordered by the trial court in an amount and type that will secure the judgment debtor against any loss or damage caused by the relief granted the judgment creditor if an appellate court determines, on final disposition, that that relief was improper. When the judgment debtor is the state, a department of this state, or the head of a department of this state, the trial court must permit a judgment to be superseded except in a matter arising from a contested case in an administrative enforcement action.

(4) Conservatorship or Custody. When the judgment involves the conservatorship or custody of a minor or other person under legal

disability, enforcement of the judgment will not be suspended, with or without security, unless ordered by the trial court. But upon a proper showing, the appellate court may suspend enforcement of the judgment with or without security.

(5) For a Governmental Entity. When a judgment in favor of a governmental entity in its governmental capacity is one in which the entity has no pecuniary interest, the trial court must determine whether to suspend enforcement, with or without security, taking into account the harm that is likely to result to the judgment debtor if enforcement is not suspended, and the harm that is likely to result to others if enforcement is suspended. The appellate court may review the trial court's determination and suspend enforcement of the judgment, with or without security, or refuse to suspend the judgment. If security is required, recovery is limited to the governmental entity's actual damages resulting from suspension of the judgment.

(b) *Lesser Amount.* The trial court must lower the amount of security required by (a) to an amount that will not cause the judgment debtor substantial economic harm if, after notice to all parties and a hearing, the court finds that posting a bond, deposit, or security in the amount required by (a) is likely to cause the judgment debtor substantial economic harm.

(c) *Determination of Net Worth.*

(1) Judgment Debtor's Affidavit Required; Contents; Prima Facie Evidence. A judgment debtor who provides a bond, deposit, or security under (a)(1)(A) or (e) in an amount based on the debtor's net worth must simultaneously file with the trial court clerk an affidavit that states the debtor's net worth and states complete, detailed information concerning the debtor's assets and liabilities from which net worth can be ascertained. An affidavit that meets these requirements is prima facie evidence of the debtor's net worth for the purpose of establishing the amount of the bond, deposit, or security required to suspend enforcement of the judgment. A trial court clerk must receive and file a net-worth affidavit tendered for filing by a judgment debtor.

(2) Contest; Discovery. A judgment creditor may file a contest to the debtor's claimed net worth. The contest need not be sworn. The creditor may conduct reasonable discovery concerning the judgment debtor's net worth.

(3) Hearing; Burden of Proof; Findings; Additional Security. The trial court must hear a judgment creditor's contest of the judgment debtor's claimed net worth promptly after any discovery has been completed. The judgment debtor has the burden of proving net worth. The trial court must issue an order that states the debtor's net worth and states with particularity the factual basis for that determination. If the trial court orders additional or other security to supersede the judgment, the enforcement of the judgment will be suspended for twenty days after the trial court's order. If the judgment debtor does not comply with the order within that period, the judgment may be enforced against the judgment debtor.

(d) *Injunction*. The trial court may enjoin the judgment debtor from dissipating or transferring assets to avoid satisfaction of the judgment, but the trial court may not make any order that interferes with the judgment debtor's use, transfer, conveyance, or dissipation of assets in the normal course of business.

(e) *Alternative Security in Certain Cases.*

(1) Applicability. Paragraph (e) applies only to a judgment debtor with a net worth of less than $10 million.

(2) Alternative Security; Required Showing. On a showing by the judgment debtor that posting security in the amount required under (a)(1) would require the judgment debtor to substantially liquidate the judgment debtor's interests in real or personal property necessary to the normal course of the judgment debtor's business, the trial court must allow the judgment debtor to post alternative security with a value sufficient to secure the judgment.

(3) Earnings on Appeal. During an appeal, the judgment debtor may continue to manage, use, and receive earnings from interests in real or personal property in the normal course of business.

(f) *Redetermination*. If an appellate court reduces the amount of the judgment that the trial court used to set the bond, deposit, or security, the judgment debtor is entitled, pending appeal of the judgment to a court of last resort, to a redetermination by the trial court of the amount of the bond, deposit, or security required to suspend enforcement.

Comment to 2023 change: Rule 24.1(b)(2) is amended to provide that a bond is effective upon filing, though the bond is still subject to challenge. New Rule 24.2(e) and (f) are added to implement section 52.007 of the Texas Civil Practice and Remedies Code.

TRD-202303184
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 29, 2023

♦ ♦ ♦

Preliminary Approval of Amendments to Texas Rules of Disciplinary Procedure 1.06, 2.10, 2.17, 7.08, and 7.11

Supreme Court of Texas

Misc. Docket No. 23-9067

Preliminary Approval of Amendments to Texas Rules of Disciplinary Procedure 1.06, 2.10, 2.17, 7.08, and 7.11

ORDERED that:

1. The Court invites public comments on proposed amendments to Texas Rules of Disciplinary Procedure 1.06, 2.10, 2.17, 7.08, and 7.11.

2. To effectuate the Act of May 17, 2023, 88th Leg., R.S., ch. 716 (H.B. 2384, codified at TEX. GOV'T CODE § 81.075(f)) and the Act of May 24, 2023, 88th Leg., R.S., ch. 1020 (H.B. 5010, codified at TEX. GOV'T CODE §§ 81.073 and 81.074), the amendments are effective September 1, 2023. But the amendments may later be changed in response to public comments. The Court requests public comments be submitted in writing to rulescomments@txcourts.gov by December 1, 2023.

3. The amendments apply only to a grievance filed on or after September 1, 2023. The amendments to Rule 2.17 apply only to an application for a place on the ballot filed for an election ordered on or after September 1, 2023.

4. The Clerk is directed to:

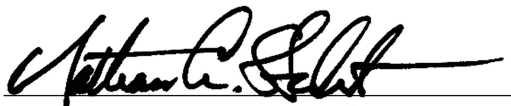
   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

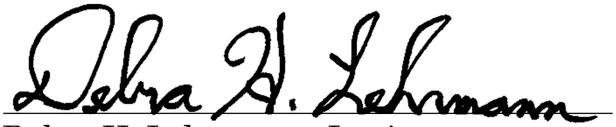
   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of this Order for publication in the *Texas Register*.

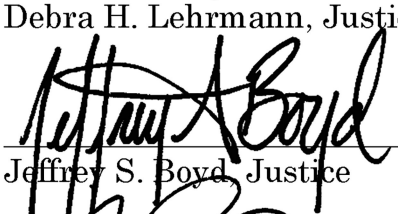
Dated: August 25, 2023.



Nathan L. Hecht, Chief Justice

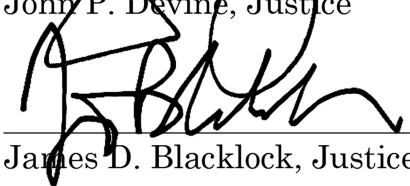


Debra H. Lehrmann, Justice

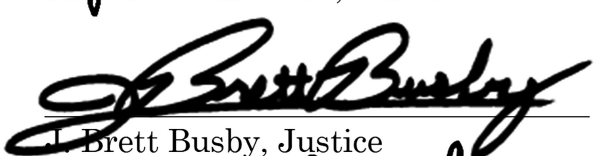


Jeffrey S. Boyd, Justice

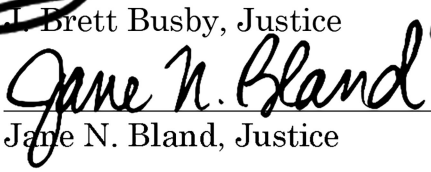
John P. Devine, Justice



James D. Blacklock, Justice

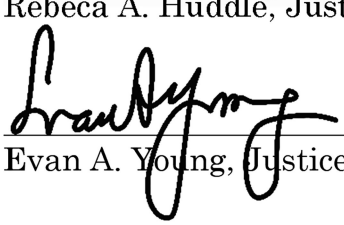


J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

***

1.06. Definitions:

***

F. "Complainant" means the person, firm, corporation, or other entity, including the Chief Disciplinary Counsel, initiating a Complaint or Inquiry.

G. "Complaint" means ~~those written matters~~a Grievance received by the Office of the Chief Disciplinary Counsel that~~,~~:

1. either on ~~the~~its face ~~thereof~~ or upon screening or preliminary investigation, alleges Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct~~.~~; and

2. is submitted by any of the following:

a. a family member of a ward in a guardianship proceeding that is the subject of the Grievance;

b. a family member of a decedent in a probate matter that is the subject of the Grievance;

c. a trustee of a trust or an executor of an estate if the matter that is the subject of the Grievance relates to the trust or estate;

d. the judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the Grievance;

e. a trustee in a bankruptcy that is the subject of the Grievance; or

f. any other person who has a cognizable individual interest in or connection to the legal matter or facts alleged in the Grievance.

***

R. "Grievance" means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of the Chief Disciplinary Counsel.

***

T. "Inquiry" means ~~any written matter concerning attorney conduct~~a Grievance received by the Office of the Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct or Disability or is not submitted by a person listed in paragraph G.

***

FF. "Sanction" means any of the following:

1. Disbarment.

2. Resignation in lieu of discipline.

3. Indefinite Disability suspension.

4. Suspension for a term certain.

5. Probation of suspension, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.

6. Interim suspension.

7. Public reprimand.

8. Private reprimand.

The term "Sanction" may include the following additional ancillary requirements:

a. Restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of Respondent's Professional Misconduct); and

b. Payment of Reasonable Attorneys' Fees and all direct expenses associated with the proceedings.

***

2.10. Classification of Grievances: The Chief Disciplinary Counsel shall within thirty days examine each Grievance received to determine whether it constitutes an Inquiry, a Complaint, or a Discretionary Referral.

A. If the Grievance is determined to constitute an Inquiry, the Chief Disciplinary Counsel shall notify the Complainant and Respondent of the dismissal. The Complainant may, within thirty days from notification of the dismissal, appeal the determination to the Board of Disciplinary Appeals. If the Board of Disciplinary Appeals affirms the classification as an Inquiry, the Complainant will be so notified and may within twenty days amend the Grievance one time only by providing new or additional evidence. The Complainant may appeal a decision by the Chief Disciplinary Counsel to dismiss the amended Complaint as an Inquiry to the Board of Disciplinary Appeals. No further amendments or appeals will be accepted.

B. If the Grievance is determined to constitute a Complaint, the Respondent shall be provided a copy of the Complaint with notice to respond, in writing, to the allegations of the Complaint. The notice shall advise the Respondent that the Chief Disciplinary Counsel may provide appropriate information, including the Respondent's response, to law enforcement agencies as permitted by Rule 6.08. The Respondent shall deliver the response to both the Office of the Chief Disciplinary Counsel and the Complainant within thirty days after receipt of the notice. The Respondent may, within thirty days after receipt of notice to respond, appeal to the Board of Disciplinary Appeals the Chief Disciplinary Counsel's determination that the Grievance constitutes a Complaint. If the Respondent perfects an appeal, the pendency of the appeal automatically stays the Respondent's deadline to respond to the Complaint and the deadlines pertaining to the investigation and determination of Just Cause. If the Board of Disciplinary Appeals reverses the Chief Disciplinary Counsel's determination, the Grievance must be dismissed immediately as an Inquiry. If the Board of Disciplinary Appeals affirms the Chief Disciplinary Counsel's determination, the Respondent must respond to the allegations in the Complaint within thirty days after the Respondent receives notice of the affirmance.

C. If the Grievance is determined to be a Discretionary Referral, the Chief Disciplinary Counsel will notify the Complainant and the Respondent of the referral to the State Bar's Client Attorney Assistance Program (CAAP). No later than sixty days after the Grievance is referred, CAAP will notify the Chief Disciplinary Counsel of the outcome of the referral. The Chief Disciplinary Counsel must, within fifteen days of notification from CAAP, determine whether the Grievance should be dismissed as an Inquiry or proceed as a

Complaint. The Chief Disciplinary Counsel and CAAP may share confidential information for all Grievances classified as Discretionary Referrals.

***

2.17. Evidentiary Hearings: Within fifteen days of the earlier of the date of Chief Disciplinary Counsel's receipt of Respondent's election or the day following the expiration of Respondent's right to elect, the chair of a Committee having proper venue shall appoint an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on a Summary Disposition or an Investigatory Panel that heard the Complaint and must have at least three members but no more than one-half as many members as on the Committee. Each Evidentiary Panel must have a ratio of two attorney members for every public member. Proceedings before an Evidentiary Panel of the Committee include:

***

P. Decision:

1. After conducting the Evidentiary Hearing, the Evidentiary Panel shall issue a judgment within thirty days. In any Evidentiary Panel proceeding where Professional Misconduct is found to have occurred, such judgment shall include findings of fact, conclusions of law and the Sanctions to be imposed.

2. The Evidentiary Panel may:

~~1.~~ a. dismiss the Disciplinary Proceeding and refer it to the voluntary mediation and dispute resolution procedure;

~~2.~~ b. find that the Respondent suffers from a disability and forward that finding to the Board of Disciplinary Appeals for referral to a district disability committee pursuant to Part XII; or

~~3.~~ c. find that Professional Misconduct occurred and impose Sanctions.

3. The Evidentiary Panel must impose a public sanction listed in Rule 1.06(FF)(1)-(7) against the Respondent if the Evidentiary Panel finds that the Respondent knowingly made a false declaration on an application for a place on the ballot as a candidate for the following judicial offices:

a. chief justice or justice of the supreme court;

b. presiding judge or judge of the court of criminal appeals;

c. chief justice or justice of a court of appeals;

d. district judge, including a criminal district judge; or

e. judge of a statutory county court.

***

7.08. Powers and Duties: The Board of Disciplinary Appeals shall exercise the following powers and duties:

A. Propose rules of procedure and administration for its own operation to the Supreme Court of Texas for promulgation.

B. Review the operation of the Board of Disciplinary Appeals and periodically report to the Supreme Court and to the Board.

C. Affirm or reverse a determination by the Chief of Disciplinary Counsel that a ~~statement~~Grievance constitutes either:

1. an Inquiry as opposed to a Complaint; or

2. a Complaint as opposed to an Inquiry.

***

7.11. Judicial Review: An appeal from a determination of the Board of Disciplinary Appeals shall be to the Supreme Court. Within fourteen days after receipt of notice of a final determination by the Board of Disciplinary Appeals, the party appealing must file a notice of appeal directly with the Clerk of the Supreme Court. The record must be filed within sixty days after the Board of Disciplinary Appeals' determination. The appealing party's brief is due thirty days after the record is filed, and the responding party's brief must be filed within thirty days thereafter. Except as herein expressly provided, the appeal must be made pursuant to the then applicable Texas Rules of Appellate Procedure. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court may affirm a decision on the Board of Disciplinary Appeals by order without written opinion. Determinations by the Board of Disciplinary Appeals that a statement constitutes either an Inquiry or a Complaint, or transferring cases, are conclusive, and may not be appealed to the Supreme Court.

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TRD-202303187
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: August 29, 2023

♦ ♦ ♦

Texas Department of Transportation

Notice of Agreement on Identification of Future Transportation Corridors Within Williamson County

The Texas Department of Transportation and Williamson County, Texas, have entered into an agreement that identifies future transportation corridors within Williamson County in accordance with Transportation Code, Section 201.619. Copies of the agreement and all plans referred to by the agreement are available at the department's Austin District Office, 7901 N. Interstate Hwy 35, Austin, Texas 78753.

TRD-202303196
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: August 30, 2023

♦ ♦ ♦

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "48 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 48 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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