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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 206. STATE WEBSITES

The Texas Department of Information Resources (department) adopts amendments to 1 TAC §206.54 and §206.74, to ensure the rules accurately reference current law, with changes to the text as published in the May 24, 2019, issue of the Texas Register (44 TexReg 2563); therefore, the rules will be republished.

In §206.54(a), the department approves amendments to correct an outdated rule reference.

In §206.74(a), the department approves amendments to correct an outdated rule reference.

The department received a comment from staff, requesting the inclusion of the referenced section title in addition to the numeric rule reference. DIR has incorporated this change.

The adopted amendment applies to both state agencies and institutions of higher education and was submitted to the Information Technology Council for Higher Education (ITCHE) for review. ITCHE determined that there was no impact upon institutions of higher education as a result of the amendment.

SUBCHAPTER B. STATE AGENCY WEBSITES

1 TAC §206.54

The amendment is adopted 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. DIR has specific statutory authority to establish rules pertaining to state websites found in Texas Government Code §2054.261(b).

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

§206.54. Indexing.

(a) All new or changed documents on a state agency website that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission must include the meta tags required by 13 TAC §3.3, Standard Deposit and Reporting Requirement, when technically feasible.

(b) The home page of a state agency website must incorporate TRAIL meta data and must include links to the following State of Texas resources:

(1) State electronic Internet portal, Texas.gov;
(2) Texas Homeland Security website;
(3) TRAIL, statewide search website; and

(4) State Auditor's Office Fraud, Waste, or Abuse Hotline, and agency fraud policy, if applicable.

(c) The home page or site policies page of a state agency website must include links to the following agency resources:

(1) Agency linking notice;
(2) Agency privacy notice;
(3) Contact information;
(4) Agency policy and procedures relating to Open Records/Public Information Act;
(5) Compact with Texans; and
(6) Agency electronic and information resources accessibility:

(A) Policy; and
(B) Coordinator contact information.

(d) Key public entry points must include links to the following agency resources:

(1) Home page;
(2) Site policies page or contact information;
(3) Site policies page or linking notice;
(4) Site policies page or privacy notice; and
(5) Agency electronic and information resources accessibility:

(A) Policy; and
(B) Coordinator contact information.

(e) A state agency must post on the agency's Internet website:

(1) For agency-awarded state grants in an amount greater than $25,000, the purposes for which the grant was awarded, as specified in Texas Government Code, §403.0245.

(2) Agency information regarding accepted gifts, grants, donations or other consideration for any salary supplement for an agency employee, as specified in Texas Government Code, §659.0201.

(3) Agency information regarding staff compensation, as specified in Texas Government Code, §659.026.

(4) The agency's approved internal audit plan and agency annual report, including any required updates, as specified in Texas Government Code, §2102.015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.
SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION WEBSITES

1 TAC §206.74
The amendment is adopted 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. DIR has specific statutory authority to establish rules pertaining to state websites found in Texas Government Code §2054.261(b).

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

§206.74. Indexing.

(a) All new or changed documents on an institution of higher education website that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission must include the meta tags required by 13 TAC §3.3, Standard Deposit and Reporting Requirement, when technically feasible.

(b) The home page of an institution of higher education website must incorporate TRAIL meta data and must include links to the following State of Texas resources:

1. State electronic Internet portal, Texas.gov;
2. Texas Homeland Security website;
3. TRAIL, statewide search website; and
4. State Auditor's Office Fraud, Waste, or Abuse Hotline, and agency fraud policy, if applicable.

(c) The home page or site policies page of an institution of higher education website must include links to the following institution of higher education resources:

1. Institution of higher education linking notice;
2. Institution of higher education privacy notice;
3. Contact information;
4. Institution of higher education policy and procedures relating to Open Records/Public Information Act;
5. Compact with Texans; and
6. Institution of higher education electronic and information resources accessibility:
   (A) Policy; and
   (B) Coordinator contact information.

(d) Key public entry points must include links to the following institution of higher education resources:

1. Home page;
2. Site policies page or contact information;
3. Site policies page or linking notice;
4. Site policies page or privacy notice; and
5. Institution of higher education electronic and information resources accessibility:
   (A) Policy; and
   (B) Coordinator contact information.

(e) An institution of higher education must post on the institution's Internet website:

1. For institution-awarded state grants in an amount greater than $25,000, the purposes for which the grant was awarded, as specified in Texas Government Code, §403.0245.
2. Institution information regarding accepted gifts, grants, donations or other consideration for any salary supplement for an institution employee, as specified in Texas Government Code, §659.0201.
3. Institution information regarding staff compensation, as specified in Texas Government Code, §659.026.
4. The institution's approved internal audit plan and agency annual report, including any required updates, as specified in Texas Government Code, §2102.015.

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 September 9, 2019.

TRD-201903175
Amanda Crawford
Executive Director
Department of Information Resources
Effective date: September 29, 2019
Proposal publication date: May 24, 2019
For further information, please call: (512) 475-4552

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 5. GENERAL ADMINISTRATION
1 TAC §355.8097
The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8097, concerning Reimbursement Methodology for Physical, Occupational, and Speech Therapy Services, with changes to the proposed text as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3489). The commission updated a section title that is referenced in subsection (f), and therefore the rule will be republished.

BACKGROUND AND JUSTIFICATION
The adopted amendment is necessary to comply with House Bill (H.B.) 1, General Appropriations Act, 86th Legislature, Regular Session, 2019 (Article II, HHSC, Rider 47).

The amendment to §355.8097 sets the reimbursement percentage for services provided by therapy assistants at 80 percent of the rate paid to a licensed therapist. Medicaid currently reimburses 70 percent of the rate paid to a licensed therapist for services provided by physical, occupational, and speech therapy assistants.

COMMENTS

The 31-day comment period ended August 12, 2019.

During this period, HHSC received comments in support of the rule as proposed from 43 commenters, including Texas Association of Home Care and Hospice, Texas Council of Community Centers, Texas Speech-Language-Hearing Association and 40 individuals.

Comment: The three organizations commented in favor of the proposed change. Texas Association of Home Care and Hospice indicated that the increase would help stabilize the workforce. Texas Council of Community Centers commented that Early Childhood Intervention providers would now be able to hire additional staff, as well as retain staff more consistently. They also communicated that a sizeable amount of therapy assistants are bilingual and serve to bridge a communication gap with a large share of clients. Texas Speech-Language-Hearing Association thanked HHSC for implementing the rate increases and doing so in such an efficient manner.

Response: HHSC appreciates the comments and makes no changes to the rule text as a result.

Comment: Of the 40 individual providers that commented, 35 indicated they would have an easier time recruiting workers, 34 said they would be able to better retain staff, 31 commented that waitlists and wait times would be reduced for clients waiting to receive services, two indicated they would be able to serve a larger geographic area, and three provided general comments stating their support of the increase.

Response: HHSC appreciates the comments and makes no changes to the rule text as a result.

STATUTORY AUTHORITY

The amendment is adopted under 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), 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.


(a) Introduction. This section describes the Texas Medicaid reimbursement methodology that the Texas Health and Human Services Commission (HHSC) uses to calculate payments for covered therapy services provided by home health agencies, comprehensive outpatient rehabilitation facilities or outpatient rehabilitation facilities, independent therapists (including Early Childhood Intervention) and physicians and other practitioners.

(b) HHSC reviews the fees for individual services at least every two years based upon:

1. analysis of Medicare fees for the same or similar item or service;
2. analysis of Medicaid fees for the same or similar item or service in other states; and
3. analysis of fees paid under commercial insurance for the same or similar item or service.

(c) HHSC may use data sources or methodologies other than those listed in subsection (b) of this section to establish Medicaid fees for physical, occupational, and speech therapy services when HHSC determines that those methodologies are unreasonable or insufficient.

(d) Medicaid reimbursement methodologies for other applicable provider types are as follows:

1. freestanding psychiatric facilities, under §355.8060 of this subchapter (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities); and
2. outpatient hospitals, under §355.8061 of this subchapter (relating to Outpatient Hospital Reimbursement).

(e) Reimbursement for services provided under the supervision of a licensed physical therapist, licensed occupational therapist, or licensed speech language pathologist. Reimbursement for services provided by a physical therapy assistant, occupational therapy assistant, or speech language pathologist assistant under the supervision of a licensed physical therapist, licensed occupational therapist, or licensed speech language pathologist is reimbursed at 80 percent of the fee paid to a licensed therapist for the same service.

(f) Fees for physical, occupational, and speech therapy services are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates for Medicaid).

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 September 4, 2019.

TRD-201903074
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 1, 2019
Proposal publication date: July 12, 2019
For further information, please call: (512) 707-6071

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 23. SINGLE FAMILY HOME PROGRAM
SUBCHAPTER H. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC) OR REHABILITATION

10 TAC §§23.80 - 23.82

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 23, Single Family HOME Program, Subchapter H, Homebuyer Assistance with New Construction (HANC) or Rehabilitation, §§23.80 - 23.82, with changes to the proposed text as published in the June 7, 2019, issue of the Texas Register (44 TexReg 2823). The rules will be republished.

The purpose of the new sections is to provide a new program activity to address the shortage of quality affordable housing available in rural communities by allowing homeownership through new construction or rehabilitation of single-family housing on acquired or owned real property.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted; however, the costs associated with the new activity created by this rule are only those typical and customary costs associated with an administrator voluntarily electing to participate in a single family activity similar to those in other sections of this chapter related to homebuyer and reconstruction/rehabilitation activities.

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


Mr. Robert Wilkinson, Executive Director, has determined that, for the first five years the adopted new rule would be in effect:

1. The new rule does not create a new government program but does establish another eligible activity type within the existing HOME Program. This new activity type provides for increased opportunities for rural Texans to access quality affordable housing opportunities.

2. The new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with underwriting and loan processing applications under the new activity, the Department anticipates handling this additional work with existing staff resources; the new rule does not reduce work load such that any existing employee positions could be eliminated.

3. The new rule does not require additional future legislative appropriations.

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

5. The new rule is creating a new regulation to address an identified need for a household driven option for prospective low-income homeowners in rural communities.

6. The new rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations because the proposed rule adds a new category of homebuyer assistance under the HOME Program. However, this new rule is necessary to establish regulations for access to and implementation of the new activity which will serve to increase the opportunity for eligible low income rural families to access affordable homes for purchase.

7. The new rule will increase the number of individuals subject to the rule's applicability but only so far as administrators voluntarily elect to participate in this new Department activity.

8. The new rule will not negatively affect the state’s economy, and may be considered to have a positive effect on the state’s economy because the proposed rule enables homebuyers to access new or rehabilitated homes at a lower cost and provides communities with a tool to increase and update their housing stock.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.002.

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

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

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule because the construction activities associated with the program will allow local contractors to bid on jobs in their area; however, because the work would be bid on a project-by-project basis, and because it is unknown what communities will end up pursuing this activity, a local impact is not able to be quantified for any given community.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has also determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be increased opportunity to access affordable housing for homeownership. There will not be any economic cost to any individuals required to comply with the new sections because the costs associated with this activity and that are incurred to administer the activity are allowable and payable under the grant through which the activity is offered.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments. The costs incurred to comply with the rule are reimbursable by the federal funding source under which the activity is offered.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 7, 2019, and July 12, 2019. Comments regarding
§23.80. Homebuyer Assistance with New Construction (HANC) or Rehabilitation Threshold and Selection Criteria.

(a) Threshold Match requirement. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date that an Application is first submitted under the NOFA to determine the applicable Threshold Match requirement. The Department may incentivize or provide preference to Applicants committing to provide additional Threshold Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA. Excluding Applications under the disaster relief and persons with disabilities set asides, Threshold Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) No Threshold Match is required when:
   (A) The Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or
   (B) The Service Area does not include the entire unincorporated area of a county, and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population up to a maximum of 15%.

(b) Cash Reserve Threshold Requirement. When HOME funds will be utilized for construction activities, documentation, as described in paragraph (1) - (2) of this subsection, must be submitted at the time of Application that demonstrates that the Applicant has at least $40,000 in cash reserves. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(c) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

§23.81. Homebuyer with New Construction or Rehabilitation (HANC) General Requirements.

(a) Eligible Activities must meet the ownership requirement in paragraph (1) of this subsection and an Activity described in paragraph (2) of this subsection:

(1) Ownership requirement. A site must be owned by the beneficiary or the HOME Activity must include one of the two following Activities:

(A) Acquisition of existing single family housing or a parcel; or

(B) Refinance of non-owner occupied real property parcel not prohibited for single family housing by zoning or restrictive covenants.

(2) All Activities must include New Construction or Rehabilitation of a unit of single family housing not occupied by the Household prior to assistance; New Construction described in this subsection includes the purchase and installation of a new unit of Manufactured Housing (MHU). Rehabilitation of an MHU is not an eligible Activity.

(b) The unit of housing in any of the Activities described in subsection (a) of this section must be occupied by the assisted Household as their principal residence for a minimum of 15 years from the Construction Completion Date.

(c) If the assisted property is owned by the Household prior to participation, the Household must be current on any existing Mortgage Loans and taxes, and the property cannot have any existing home equity loan liens. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(d) The purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing. Compliance with the post-improvement value limitation must be evidenced with a final appraisal of the completed project prior to release of retainage.

(e) Activity Costs. Total Activity Costs, exclusive of Match funds, are limited to an amount not to exceed the federal subsidy limitations defined in 24 CFR §92.250. Direct Activity Costs, exclusive of Match and leverage, for construction are limited to:

(1) Construction of new site-built housing: The Direct Activity Costs are not restricted beyond the Total Activity Costs as identified in this subsection;

(2) Placement of an energy efficient MHU: $75,000; and

(3) Rehabilitation that is not Reconstruction: $60,000, or up to $100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed $10,000 and not causing the total subsidy to exceed the limitations set forth by 24 CFR §92.250 may be requested and, if approved, used to pay for any of the following as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; or

(3) Homebuyer requests for accessibility features.

(g) Activity soft costs eligible for reimbursement are limited to:

(1) New Construction: no more than $11,500 per housing unit; or

(2) Replacement with an MHU: no more than $5,000 per housing unit;

(3) Rehabilitation: $8,500 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are

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reconstructed or if the existing housing unit was built after December 31, 1977.

(h) Funds for administrative costs are limited to no more than 4% of the Direct Activity Costs, exclusive of Match funds.

(i) Homebuyers may choose to obtain financing for the acquisition or construction, or any combination thereof, from a third-party lender so long as the loan meets the requirements of §20.13 of this title (relating to Loan, Lien and Mortgage Requirements for Activities).

(j) Direct assistance will be structured as a fully amortizing, repayable loan and will initially be evaluated at zero percent interest. The minimum loan term shall be equal to the required federal affordability period based on the HOME investment, and shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to at least the minimum required housing payment. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed 5% and such result may deem the applicant as overqualified for assistance. The term shall not exceed 30 years and not be less than 15 years.

(1) The total Mortgage Loan may include costs incurred for Acquisition or Refinance, Mortgage Loan closing costs, and Direct Activity Costs, exclusive of Match funds.

(2) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this title.

(3) For buyers whose income is equal to or less than 50% AMFI, the minimum required housing payment shall be no less than 15% of the household's gross income. For homebuyers whose income exceeds 50% AMFI, the minimum required housing payment shall be no less than 20% of the household's gross income.

(k) Earnest money may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(l) To ensure affordability, the Department will impose recapture provisions established in this Chapter.

(m) For New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitation under this Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) To the extent that a set of architectural plans are generated and used by an Applicant for more than one home site, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer for the reuse of the plans on that subsequent specific site.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.82. Homebuyer with New Construction (HANC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (14) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance from the Department;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of any Lead-Based Paint (LBP) if activity involves an existing unit and certification that LBP will be mitigated as required by 24 CFR §92.355;

(8) Evidence that the housing unit will be located outside of the 100-year floodplain;

(9) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, or duplication of benefit;

(10) Information necessary to draft Mortgage Loan documents, including issuance of an SOL;

(11) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(12) Documentation of homebuyer completion of a homebuyer counseling program/class provided by a HUD certified housing counselor;

(13) For Activities involving acquisition of real property:

(A) A title commitment to issue a title policy that evidences that the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 30 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;
(B) Executed sales contract; and

(C) A loan estimate or letter from any other lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien Mortgage Loan requirements, and the requirements of this Chapter.

(14) For Activities that do not involve acquisition of real property:

(A) A title commitment or policy, or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Householder's ownership, such as a warranty deed or ground lease for a 99-year leasehold. The effective date of the title commitment must be no more than 30 days prior to the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. These documents must evidence the definition of Homeownership is met;

(B) A tax certificate that evidences a current paid status;

(C) Written consent from all Persons who have a valid lien or ownership interest in the Property for the Rehabilitation or New Construction Activities;

(D) Consent to demolish from any existing Mortgage Loan lien holders and consent to subordi nate to the Department's loan, if applicable; and

(15) Any other documentation necessary to evidence that the Activity meets the Program requirements.

(b) Loan closing. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post Rehabilitation or New Construction value of improvements prior to the issuance of loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (10) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of additional documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (10) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 calendar days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 calendar days after the Construction Completion Date.

(2) If applicable, a maximum of 50% of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed.

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo, are required to be submitted. The inspection must be signed and dated by the inspector and Administrator.

(4) Certification of the following is required:

(A) That its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided;

(B) That no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(C) That each request for disbursement of HOME funds is for the actual cost of providing a service; and

(D) That the service does not violate any conflict of interest provisions.

(5) Original, fully executed, legally enforceable loan documents for each assisted Householder containing remedies adequate to enforce any applicable affordability requirements are required. Certified copies of fully executed, recorded loan documents that are required to be recorded in the real property records of the county in which the housing unit is located must be returned to the Department, duly certified as to recordation by the appropriate county official. This documentation prior to disbursement is not applicable for funds made available at the loan closing.

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all Program Rules.

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed.

(8) Disbursement requests must include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least 40 calendar days after the Construction Completion Date.

(9) For final disbursement requests, the following is required:

(A) Submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and disposal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit;

(B) Certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan; and

(C) A final appraisal of the property after completion of improvements.

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 calendar days after the termination date of the Contract in order to remain in compliance with the Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.
The Texas Education Agency (TEA) adopts an amendment to §100.1002, concerning open-enrollment charter school application and selection procedures and criteria. The amendment is adopted without changes to the proposed text as published in the June 21, 2019 issue of the Texas Register (44 TexReg 3048) and will not be republished. The adopted amendment revises the current rule concerning procedures for application review and criteria for advancement in the application process.

REASONED JUSTIFICATION: Section 100.1002 sets forth the procedures pertaining to the application for an open-enrollment charter school. It describes the process by which the commissioner shall review applications initially, how the applications shall be evaluated both within TEA and by external reviewers, and procedures to be followed related to the award of a charter.

The adopted amendment to §100.1002(b) clarifies current TEA procedures for review of applications for charter. The adopted amendment draws a clear distinction between TEA procedure when an application is incomplete and TEA procedure when an application contains a fundamental deficiency. If an application is not complete, the TEA will notify the applicant and allow five business days for missing documents to be submitted. If an application does not meet the standards in TEC, §12.101, and 19 TAC §100.1015, the TEA will remove the application without further processing.

The adopted amendment to §100.1002(h) adds fiscal soundness to the commissioner's criteria for application review. Prospects for the school's long-term financial health are an important consideration in keeping with TEA's mission to improve outcomes for all public school students.

The adopted amendment to §100.1002(j) clarifies statutory authority regarding a school's unacceptable performance rating.

The adopted amendment to §100.1002(q) removes the term "forfeited" and instead states that if a charter does not open and serve students within the timeline established in the rule, the charter is automatically considered void and returned to the commissioner. This change parallels language in 19 TAC §100.1015(a) and clarifies that that subsection is applicable to a charter returned under the circumstances of 19 TAC §100.1002(q).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 21, 2019, and ended July 22, 2019. Following is a summary of public comment received and agency response.

Comment: The Texas American Federation of Teachers (Texas AFT) commented on the proposed amendment to 19 TAC §100.1002(j), which states priority will be given to a charter applicant proposing a school in the attendance zone of a school district campus with an unacceptable rating for the two preceding years. Texas AFT requested the addition of language to the effect that a charter applicant should be restricted from proposing a school in the attendance zone of a school district campus rated A or B in the two preceding years.

Response: The agency disagrees. The purposes of TEC, Chapter 12, include increasing the choice of learning opportunities within the public school system and establishing a new form of accountability for public schools. Prioritizing applicants who propose to locate in areas with schools rated unacceptable is consistent with these goals; but the commenter's suggested restriction from opening schools in certain areas is not consistent with these goals.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter for an open-enrollment charter school to an eligible entity, describing procedures the commissioner must follow to thoroughly investigate and evaluate such applicants; TEC, §12.1011, which describes criteria by which the commissioner may grant charters for open-enrollment charter schools to certain high-performing entities; TEC, §12.110, which requires the commissioner to adopt an application form and procedures around application for a charter for an open-enrollment charter school; TEC, §12.113, which sets forth the standards to be met by each charter the commissioner grants for an open-enrollment charter school; TEC, §12.152, which authorizes the commissioner to grant a charter for an open-enrollment charter school on the application of a public senior college or university or public junior college; TEC, §12.153, which authorizes the commissioner to adopt rules to implement TEC, Chapter 12, Subchapter E, College or University or Junior College Charter School; and TEC, §12.154, which specifies the content of an application for charter from a public senior college or university or a public junior college.


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 September 5, 2019.

TRD-201903099
The Texas Education Agency (TEA) adopts an amendment to §100.1015, concerning applicants for an open-enrollment charter, public senior college or university charter, or public junior college charter. The amendment is adopted with changes to the proposed text as published in the June 21, 2019 issue of the Texas Register (44 TexReg 3051) and will be republished. The adopted amendment clarifies terminology; removes the exception to the minimum school size requirement; establishes an exception to the minimum qualification requirements for schools that serve youth referred to or placed in a residential trade center by a local or state agency; amends the timeframe for charter schools to have at least 50% of their students in tested grades; and modifies the list of content that, if included, would cause an application to be removed from consideration.

REASONED JUSTIFICATION: Section 100.1015 describes requirements of an application for open-enrollment charter, public senior college or university charter, or public junior college charter. It sets forth requirements for an entity to be eligible to apply, and it details financial, governing, educational, and operational standards that must be thoroughly addressed in the application in order for it to be considered by the commissioner.

The adopted amendment to §100.1015 clarifies the commissioner's criteria for review of an application for charter by adding language to help explain what is meant by the term "financial standards" in subsection (b)(1), governing standards in subsection (b)(2), and "educational and operational standards" in subsection (b)(3).

In subsection (b)(1)(C)(iii), the proposed amendment would have paralleled a statutory change involving minutes of instruction rather than days. In response to public comment, subsection (b)(1)(C)(iii) was revised at adoption to define funded days of operation in terms of the number of days that may be approved for a given school.

In subsection (b)(1)(D), the adopted amendment removes an allowance for a lower-than-prescribed number of students. The rule had stated that an entity applying for a charter must commit to serving a minimum of 100 students at all times to ensure financial viability but allowed the entity to provide an explanation if that number is not optimum and/or attainable. Removal of the allowance in the adopted amendment helps eliminate ambiguity with regard to the commissioner's criteria for financial viability.

The adopted amendment sets forth an exception in adopted subsection (b)(3)(F)(i), which previously mandated that all teachers at the school have a baccalaureate degree regardless of subject matter taught. The adopted amendment adds the exception as new subsection (b)(3)(F)(iv), which states that in an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree subject to the requirements described in 19 TAC §§100.1212, Personnel. This change aligns the rule with House Bill 1469, 85th Texas Legislature, Regular Session, 2017.

The adopted amendment modifies subsection (b)(3)(G) to require that a school have at least 50% of its students in tested grades by the start of the charter school's third year of operation rather than the fifth year of operation, which was previously specified in the rule. Requiring that at least 50% of students be in tested grades by a school's third year will accelerate progress toward TEA's goal to increase transparency, fairness, and rigor in academic performance.

Finally, the adopted amendment to subsection (b)(4)(E) adds items to the list of improper content in an application that, if included, would cause the application to be removed from consideration. This clarifies TEA's procedure in response to an applicant's plagiarism infractions or other unauthorized use of third parties' work product, in addition to its procedure regarding violations of state or federal law.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began June 21, 2019, and ended July 22, 2019. Following is a summary of public comment received and agency response.

Comment: Regarding proposed 19 TAC §§100.1015(b)(1)(C)(iii), Schulman, Lopez, Hoffer & Adelson, LLP commented that specifying 75,600 in the rule as the number of minutes to be used for calculation of a school's funded operations would result in inaccurate financial statements by schools with programs approved to provide fewer than 75,600 minutes per year.

Response: The agency partially agrees and offers the following clarification. State funding is calculated in terms of days of instruction. Public schools across the state, not just those with special programs referenced by the commenter, might vary in the number of days of instruction they offer. Therefore, the agency has revised 19 TAC §§100.1015(b)(1)(C)(iii) at adoption to account for such variance.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter for an open-enrollment charter school to an eligible entity, describing procedures the commissioner must follow to thoroughly investigate and evaluate such applicants; TEC, §12.110, which requires the commissioner to adopt an application form and procedures around application for a charter for an open-enrollment charter school; TEC, §12.129, which describes minimum qualifications for principals and teachers in an open-enrollment charter school; TEC, §12.152, which authorizes the commissioner to grant a charter for an open-enrollment charter school on the application of a public senior college or university or public junior college; TEC, §12.153, which authorizes the commissioner to adopt rules to implement TEC, Chapter 12, Subchapter E, College or University or Junior College Charter School; TEC, §12.154, which specifies the content of an application for charter from a public senior college or university or a public junior college; and TEC, §12.156, which provides that TEC, Chapter 12, Subchapter D, Open-Enrollment Charter School, applies to a college or university charter school or junior college charter school except where otherwise indicated in TEC, Chapter 12, Subchapter E.

§100.1015. Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter.

(a) No applicant will be considered that has, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned or that is considered to be a corporate affiliate of, or substantially related to, an entity that, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned. The commissioner of education may not grant more than one charter for an open-enrollment charter school to any charter holder.

(b) Notwithstanding any other provisions in this chapter, the following provisions apply to open-enrollment charter applicants and successful charter awardees authorized by the commissioner under requests for applications adopted after November 1, 2012.

(1) Financial standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following financial standards to demonstrate the financial viability of the charter, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) Any existing entity applying for the charter must be in good standing with the Internal Revenue Service (IRS), the Texas Secretary of State, and the Texas Comptroller of Public Accounts. An existing entity must also be in good standing with all regulatory agencies in its home state.

(B) Each entity must provide evidence of financial competency and sustainability by providing evidence of an appropriate business plan that includes each of the following:

(i) a succinct long-term vision for the proposed school;

(ii) three to five core values or beliefs, with succinct explanations, for the operation of the proposed school;

(iii) a brief analysis of the target location(s) for the proposed school with a succinct explanation of the reasons for choosing the location(s);

(iv) a brief analysis of the competition in the area(s) for the same students and the methods that the proposed school will use to recruit and retain students;

(v) a brief narrative of the growth plan for the first five years of operation of the proposed school that matches all projections included in the budget and considers the potential expansion of competition in the area for the same student population;

(vi) a list of risk factors, with brief explanations, that could jeopardize the viability of the proposed school;

(vii) a list of success factors, with brief explanations, that the proposed school founders have analyzed and determined will outweigh the risks;

(viii) an unqualified opinion as provided in the most recent audited financial statements of the applicant if the entity has been in existence at least a year;

(ix) a five-year budget projection of revenue and expenditures for the proposed charter using the template that will be provided in the request for applications (RFA);

(x) a narrative response, based on the revenue and expenditures provided in the template that will be provided in the RFA, detailing the ways in which the budget projections were derived, including any assumptions used; and

(xii) support documentation for budget projections as detailed in the budget template that will be provided with the RFA.

(C) Loans and lines of credit are liabilities that must be repaid and will be considered as available funding. Loans or lines of credit may be characterized as assets and as cash on hand. The applicant must identify in the template provided in the RFA available funding for start-up costs, as documented by current assets listed in the balance sheet and/or pledges for donations that do not require repayment, meeting or exceeding the following amounts:

(i) the total amount of funds available;

(ii) the amount per student projected to be served in the first year of operation; and

(iii) the number of days of operation funded by the amount in this subparagraph, defined by the total annual budget divided by the number of approved instructional days.

(D) To ensure financial viability, the entity must commit to serving a minimum of 100 students at all times.

(E) The entity applying for the charter must have liabilities that are less than 80% of its assets.

(F) The aggregate of projected budgeted expenses must be less than the aggregate of projected total revenues by the end of the first year of operation provided that:

(i) projected revenues are documented and use the amount per student designated in the RFA when calculating Foundation School Program (FSP) funding that will begin during the first year of operation, or the applicant provides compelling evidence as to the reasons that its FSP will be higher than the rate designated in the RFA; and

(ii) all reasonable start-up and first-year expenditures are included in the budgets or an explanation for not needing to include them is included in the budget narratives.

(G) No more than 27% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of 500 or fewer students, or no more than 16% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of more than 500 students. Administrative costs are those costs identified as such in Texas Education Agency (TEA) financial publications for charter schools.

(2) Governing standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following governing standards to demonstrate sound establishment and oversight of the charter's educational mission, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation, except as provided by Texas Education Code (TEC), §12.1054(a)(2).

(A) To qualify as an eligible entity in accordance with TEC, §12.101(a)(3), as an organization that is exempt under 26 United States Code (USC), §501(c)(3), the applicant must have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS. Thus, an applicant
cannot attain status as an eligible entity that is exempt under 26 USC, §501(c)(3), as a disregarded entity, a supporting organization, or a member of a group exemption of a currently recognized 501(c)(3) tax-exempt organization. A religious organization, sectarian school, or religious institution that applies must have an established separate non-sectarian entity that is exempt under 26 USC, §501(c)(3), to be considered an eligible entity. Entities that have applied for 501(c)(3) status, but have yet to receive the exemption from the IRS, must provide the letter of determination of the 501(c)(3) status issued by the IRS prior to consideration for interview. Failure to secure 501(c)(3) status deems an entity ineligible.

(B) The articles of incorporation, the Certificate of Filing, the Certificate of Formation, and the bylaws of the applicant must vest the management of the corporate affairs in the board of directors. The management of the corporate affairs shall not be vested in any member or members nor shall the corporate charter or bylaws confer on or reserve to any other entity the ability to overrule, remove, replace, or name the members of the board of the charter holder during the duration of the charter’s existence. However, if the applicant or its affiliate is a high performing entity, then it may vest management in a member provided that the entity may change the members of the governing body of the charter holder prior to the expiration of a member’s term only with commissioner’s written approval. An academic performance rating that is below acceptable in another state, as determined by the commissioner, does not satisfy this section. Any other change in the aforementioned governance documents pursuant to the management of the corporate affairs of the nonprofit entity may only occur with the approval of the commissioner in accordance with §100.103(b) of this title (relating to Charter Amendment) or in accordance with any other power granted to the commissioner in state law or rule.

(C) If the sponsoring entity is a 501(c)(3) nonprofit corporation, its bylaws must clearly state that the charter holder and charter school will comply with the Texas Open Meetings Act and will appropriately respond to Texas Public Information Act requests.

(D) No family members within the third degree of consanguinity or second degree of affinity shall serve on the charter holder or charter school board.

(E) No family member within the third degree of consanguinity or third degree of affinity of any charter holder board member, charter school board member, or superintendent shall receive compensation in any form from the charter school, the charter holder, or any management company that operates the charter school.

(F) The applicant shall specify that the governing body accepts and will not delegate ultimate responsibility for the school, including academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school.

(3) Educational and operational standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall successfully meet each of the following educational and operational standards to ensure careful alignment of curricula to the Texas Essential Knowledge and Skills, as determined by the commissioner or the commissioner’s designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) The charter applicant must clearly explain the overall educational philosophy to be promoted at the school, if authorized.

(B) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to students and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.

(C) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will differ from the traditional neighborhood schools or charter schools that currently operate in the area where the school or schools would be located.

(D) The charter applicant must clearly explain how classroom practices will reflect the connections among curriculum, instruction, and assessment.

(E) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:

(i) address the instructional needs of students performing both below and above grade levels in major content areas;

(ii) differentiate instruction to meet the needs of diverse learners;

(iii) provide a continuum of services in the least restrictive environment for students with special needs as required by state and federal law;

(iv) provide bilingual and/or English as a second language instruction to English language learners as required by state law; and

(v) implement an educational program that supports the enrichment curriculum, including fine arts, health education, physical education, technology applications, and, to the extent possible, languages other than English.

(F) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.

(i) Except as provided in clause (iv) of this subparagraph, all teachers, regardless of subject matter taught, must have a baccalaureate degree.

(ii) Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.

(iii) Paraprofessionals must be certified as required to meet state and/or federal law.

(iv) In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree, subject to the requirements described in §100.1212 of this title (relating to Personnel).

(G) The charter applicant must commit to serving, by its third year of operation, at least as many students in grades assessed for state accountability purposes as those served in grades not assessed for state accountability purposes.

(H) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.
(4) Additional requirements. An applicant for a competitive open-enrollment charter to be considered for award, as authorized by TEC, Chapter 12, Subchapter D, must ensure that each of the following occur or the application will be disqualified.

(A) The application is complete and meets all of the requirements set forth in paragraphs (1)-(3) of this subsection, as determined by the commissioner or the commissioner's designee.

(i) The commissioner or the commissioner's designee may conclude the review of an application once it is apparent that the application is incomplete or that the application fails to meet one or more of the requirements set forth in paragraphs (1)-(3) of this subsection.

(ii) Any applicant who submits an incomplete application, an application that fails to meet one or more of the requirements as set forth in paragraphs (1)-(3) of this subsection, or an application that contains information referenced in subparagraph (D)(i)-(iii) of this paragraph will be notified pursuant to §100.1002(b) of this title (relating to Application and Selection Procedures and Criteria) by the TEA division responsible for charter schools that the application has been removed from consideration of award and will not be sent forward for scoring by the external review panel.

(I) An applicant that is notified that the application has been removed from consideration of award by the commissioner or the commissioner's designee will have five business days to respond in writing and direct TEA staff responsible for charter schools to the specific parts of the application, which was received by the application deadline, that address the identified issue or issues, or to submit missing attachments.

(II) Once any additional review is complete, the decision of the commissioner or the commissioner's designee is final and may not be appealed.

(B) A representative of any applicant must not initiate contact with any employee of the TEA, other than the commissioner or commissioner's designee, regarding the content of its application from the time the application is submitted until the time of the commissioner award of charters in the applicable application cycle is final, following the 90-day State Board of Education (SBOE) veto period.

(C) An applicant or person or entity acting on behalf of the applicant may not provide any item of value, directly or indirectly, to the commissioner, any employee of the TEA, or member of the SBOE during the no-contact period as defined in §100.1002(k) of this title.

(D) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website. Therefore, the following must be excluded from all applications:

(i) personal email addresses;
(ii) proprietary material;
(iii) copyrighted material;
(iv) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

(v) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(E) Any application that includes material referenced in subparagraph (D)(ii)-(v) of this paragraph will be removed from consideration without any further opportunity for review.

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 September 5, 2019.
TRD-201903100
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: September 25, 2019
Proposal publication date: June 21, 2019
For further information, please call: (512) 475-1497

**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

**CHAPTER 53. FINANCE**

**SUBCHAPTER A. FEES**

**DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES**

31 TAC §53.2

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 22, 2019, adopted an amendment to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules without changes to the proposed text as published in the July 19, 2019, issue of the Texas Register (44 TexReg 3614).

The amendment allows for the verification of purchase of a fishing, hunting, or combination fishing and hunting license via a wireless communication device.

Under current rule, a person engaged in a hunting or fishing activity must be in physical possession of the necessary license, except for persons who purchased a license electronically and are awaiting fulfillment by mail. In the most recent session of the Texas Legislature, House Bill 547 was enacted and has become law. The bill requires the department to adopt rules allowing persons to present "for the purpose of verification of possession a hunting, fishing, or combination hunting and fishing license an image displayed on a wireless communication device." The bill provides that the image may be from the department’s website or a photograph of the license. The amendment effects the necessary changes and removes current language providing for exceptions to physical possession of a license that are no longer applicable.
The amendment requires images of licenses to be of sufficient resolution, contrast, and size to allow verification of licensure, which is necessary to prevent misunderstandings, as a photograph taken of a license taken at great distance, out of focus, or under poor lighting would frustrate the department's ability to ascertain legal compliance with licensing requirements.

The department received no comments opposing adoption of the proposed amendment.

The department received eight comments supporting adoption of the proposed amendment.

The amendment is adopted under the authority of Parks and Wildlife Code, §§42.006, 46.0085, and 50.004, which require the department by rule to allow for a person to present for the purpose of verification of possession of a hunting, fishing, or combination hunting and fishing license an image displayed on a wireless communication device.

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 30, 2019.

TRD-201903049
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Effective date: September 19, 2019
Proposal publication date: July 19, 2019
For further information, please call: (512) 389-4329

CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 22, 2019, adopted amendments to §65.329, concerning Permit Application, and §65.376, concerning Possession of Live Fur-bearing Animals. The amendments are adopted without changes to the proposed text as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3533), and will not be republished.

The amendment to §65.329 allows the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; Parks and Wildlife Code, Chapter 67; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the amendment allows the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the new provisions and provides for a review process for agency decisions to refuse permit issuance or renewal.

The amendment to §65.376 allows the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; Parks and Wildlife Code, Chapter 71; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter C, E, L, R, or R-1; Parks and Wildlife Code, §63.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the amendment allows the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the new provisions and provides for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue a permit to hold protected live wildlife or to collect and possess wildlife for commercial purposes should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of taking or allowing the take of wildlife resources to persons who exhibit a demonstrable disregard for the regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the proposed amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations were the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recom-
amended by the department as conditions; and other aggravating or mitigating factors.

The amendment retains current subsection (c), which allows the department to refuse permit issuance or renewal to any person who is not in compliance with applicable recordkeeping or reporting requirements, but relocates that provision in the body of the amendment.

The amendment also provides for department review of a decision to refuse permit issuance or renewal. The amendment requires the department to notify the applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendment stipulates that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

The department received one comment opposing adoption of the proposed rules. To the extent that the agency is able to determine the meaning of the comment, the commenter is opposed in principle to permits of any kind. The department disagrees with the comment and responds that the subject of the rules as proposed was the administrative process of permit refusal or denial, not the existence of the permit programs themselves; therefore, the comment is not germane to the rulemaking. No changes were made as a result of the comment.

The department received one comment supporting adoption of the proposed rules.

SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

31 TAC §65.329

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 67, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

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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Robert D. Sweeney, Jr.
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Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4329

SUBCHAPTER Q. STATEWIDE FUR-BEARING ANIMAL PROCLAMATION

31 TAC §65.376

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 71, which authorizes the department to regulate permit application procedures and hearing procedures for permits to take, possess, propagate, transport, export, import, or sell fur-bearing animals.

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

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CHAPTER 69. RESOURCE PROTECTION

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 22, 2019, adopted amendments to §§69.4, concerning Renewal; 69.47, concerning Qualifications; and 69.303, concerning Application for Permit and Permit Issuance, and new §69.6, concerning Refusal of Issuance or Renewal of Permit; Review of Agency Decision, without changes to the proposed text as published in the July 12, 2019, issue of the Texas Register (44 TexReg 3536). The amendments, collectively, eliminate provisions governing the issuance or renewal of various permits on the basis of convictions for previous criminal conduct involving activities regulated by the department or failure to comply with reporting and recordkeeping requirements and replace them with a single standard governing such refusals, similar to current standards in effect for other permit programs administered by the department. New §69.6, concerning Refusal of Issuance or Renewal of Permit; Review of Agency Decision, establishes a similar regulation applicable to plant permits.

The amendments to §69.4 alter the provisions of the section to replace "shall" with "may" with respect to the renewal of scientific and commercial plant permits and eliminate a provision allowing the department to refuse permit issuance to any person finally convicted of any violation of Parks and Wildlife Code during the five-year period immediately prior to an application for a commercial plant permit. The changing of "may" to "shall" is necessary to emphasize that permit privileges are not automatic, but dependent upon a number of factors that the department evaluates prior to deciding whether to issue a permit or not. The removal of paragraph (4) is necessary, as has been mentioned previously in this preamble, because the department is implementing a standardized set of provisions regarding refusal of permit issuance or renewal.

New §69.6 allows the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded nolo contendere to, received deferred adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 88; a provision other than Parks and Wildlife Code Chapter 88 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; or a violation of the Lacey Act (16 U.S.C. §§3371-3378). In addition, the new section allows the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit under the proposed new provision and provides

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for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue or renew a permit should take into account an applicant's history of violations involving plant permits, serious violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of collecting plant resources to persons who exhibit a demonstrable disregard for the regulations governing plant resources. Similarly, it is appropriate to deny permit privileges to a person who has exhibited demonstrable disregard for natural resource law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of natural resource law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of a permit or permit renewal as a result of an adjudicative status listed in the new rule would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance or renewal based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The new rule also includes a provision allowing the department to refuse permit issuance or renewal to any person who is not in compliance with applicable recordkeeping or reporting requirements. The provision is necessary because the department believes that a person who is unable to comply with regulatory requirements that allow the department to monitor the performance of permit activities should not be entrusted with the privilege of permit issuance or renewal.

The new rule also provides for department review of a decision to refuse permit issuance or renewal. The new rule requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The new rule stipulates that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The new provision is intended to help ensure that decisions affecting permit issuance and renewal are correct.

The amendments to §69.47 and §69.303 eliminate a provision in each section authorizing the department to refuse issuance or renewal of wildlife rehabilitation permits for a person convicted of any violation of state or federal law applicable to fish or wildlife. The department has determined that the current provisions, in addition to allowing for permit issuance refusal for minor violations of fish and game law, are not as comprehensive as the template used for similar provisions in more recent rulemakings.

The amendments to §69.47 and §69.303 allow the department to refuse permit issuance or renewal to any person who has been finally convicted of, pleaded no contest, refused adjudication, or been assessed an administrative penalty for a violation of: Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1; a provision of the Parks and Wildlife Code other than Chapter 43, Subchapter D, E, L, R, or R-1 that is a Parks and Wildlife Code Class A or B misdemeanor, state jail felony, or felony; Parks and Wildlife Code, §83.002; or the Lacey Act (16 U.S.C. §§3371-3378). In addition, the amendments would allow the department to prevent a person from acting on behalf of or as a surrogate for a person prevented from obtaining a permit and provide for a review process for agency decisions to refuse permit issuance or renewal.

The department has determined that the decision to issue a permit to hold protected live wildlife should take into account an applicant's history of violations involving the capture and possession of live animals, major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies), and Lacey Act violations. The department reasons that it is appropriate to deny the privilege of possession of wildlife resources to persons who exhibit a demonstrable disregard for the regulations governing wildlife. Similarly, it is appropriate to deny the privilege of holding wildlife to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, transported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is often predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction. Rather than expending resources and time conducting concurrent state and federal prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for refusing to issue or renew a permit. Because the elements of the underlying state criminal offense must be proven
to establish a conviction or assessment of a civil penalty for a Lacey Act violation, the department reasons that such conviction or assessment constitutes legal proof that a violation of state law occurred and the conviction is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court.

The denial of permit issuance or renewal as a result of an adjudicative status listed in the proposed amendment would not be automatic, but within the discretion of the department. Factors that may be considered by the department in determining whether to refuse permit issuance based on adjudicative status include, but are not limited to: the number of final convictions or administrative violations; the seriousness of the conduct on which the final conviction or administrative violation is based; the existence, number and seriousness of offenses or administrative violations other than offenses or violations that resulted in a final conviction; the length of time between the most recent final conviction or administrative violation and the application for enrollment or renewal; whether the final conviction, administrative violation, or other offenses or violations was the result of negligence or intentional conduct; whether the final conviction or administrative violations resulted from the conduct committed or omitted by the applicant, an agent of the applicant, or both; the accuracy of information provided by the applicant; for renewal, whether the applicant agreed to any special provisions recommended by the department as conditions; and other aggravating or mitigating factors.

The amendments also would include a provision allowing the department to refuse permit issuance or renewal to any person who is not in compliance with applicable recordkeeping or reporting requirements. The provision is necessary because the department believes that a person who is unable to comply with regulatory requirements that allow the department to monitor the performance of permit activities should not be entrusted with the privilege of holding a permit, depending on the circumstances.

Additionally, the amendments provide for department review of a decision to refuse permit issuance or renewal. The new rule requires the department to notify an applicant not later than the 10th day following a decision to refuse permit issuance or denial and to set a time and date for conducting a review of an agency decision to refuse permit issuance or renewal within 10 days of receiving a request for a review. The amendments stipulate that a review panel consist of three department managers with appropriate expertise in the activities conducted under the permit in question. The amendments are intended to help ensure that decisions affecting permit issuance and renewal are correct.

The department received one comment opposing adoption of the proposed amendments. To the extent that the department is able to ascertain the commenter's intention, the commenter is concerned about toads. The department disagrees with the comment and responds that the rules as adopted do not affect toads. No changes were made as a result of the comment.

The department received one comment supporting adoption of the proposed rules.

**SUBCHAPTER A. ENDANGERED, THREATENED, AND PROTECTED NATIVE PLANTS**

31 TAC §69.4, §69.6

The amendments and new section are adopted under the authority of Parks and Wildlife Code, Chapter 88, which requires the commission to adopt regulations, including regulations to provide for permit application, forms, fees, procedures, and hearing procedures.

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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Robert D. Sweeney, Jr.
General Counsel
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**SUBCHAPTER C. WILDLIFE REHABILITATION PERMITS**

31 TAC §69.47

The amendment is adopted under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

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

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**SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS**

31 TAC §69.303

The amendment is adopted under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

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 30, 2019.
PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. OPERATIONAL RULES

SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §675.20, §675.25

The Texas Low-Level Radioactive Waste Disposal Compact Commission (Commission) adopts the amendment to §675.20 and new §675.25. The amendment to §675.20 is adopted without change and new §675.25 is adopted with change to the text as published in the July 5, 2019, issue of the Texas Register (44 TexReg 3430).

Summary of the Factual Basis for the Adoption of the Rules

In enacting the Texas Low-Level Radioactive Waste Disposal Compact Consent Act (Act), the United States Congress acknowledged the public value of the party states’ cooperation in the protection of the health, safety, and welfare of their citizens and the environment of the party states (Public Law 105-236, 112 Stat. 1542). In furtherance of this policy, the Congress provided for the economic management of low-level radioactive waste to distribute the costs, benefits, and obligations among the party states (Public Law 105-236, 112 Stat. 1542). By adopting the Act in Texas Health and Safety Code (THSC), Chapter 403, the Texas Legislature authorized the Commission to enter into agreements with any person for the importation of low-level radioactive waste into the compact for disposal (THSC, §403.006). The Commission recognizes a public benefit in making a reservation of capacity at the Andrews, Texas compact facility for certain generators of low-level radioactive waste.

The Texas Legislature has placed an annual limit on the total number of curies of low-level radioactive waste that may be imported from non-party states (THSC, §401.207(e)). The amendment of §675.20 and new §675.25 will better serve the public by ensuring that small quantity generators of low-level radioactive waste will have available capacity from the total annual allotment for the disposal of that waste. It is critical that all generators of low-level radioactive waste have a pathway for disposal, however, because of their size, small quantity generators may not have the same resources to arrange for disposal as their larger counterparts. Further, the disposal of small quantity generator waste is often coordinated through brokers. The amendment and new rule will give brokers regulatory certainty that disposal space will be available when they solicit agreements to dispose of small quantity generator waste on behalf of those entities. Accordingly, the amendment and new rule implement the policy directives of the Act. The Commission amends the term "small quantity generator" to align with adopted new §675.25, concern-
PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.13

The Texas Department of Public Safety (the department) adopts amendments to §4.13, concerning Authority to Enforce, Training and Certificate Requirements. This rule is adopted without changes to the proposed text as published in the August 2, 2019, issue of the Texas Register (44 TexReg 4032) and will not be republished.

The amendments are necessary to ensure this section is consistent with Texas Transportation Code, §644.101, which establishes which peace officers are eligible to enforce Chapter 644 of the Texas Transportation Code.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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 September 4, 2019.
TRD-201903092
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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Proposal publication date: August 2, 2019
For further information, please call: (512) 424-5848

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