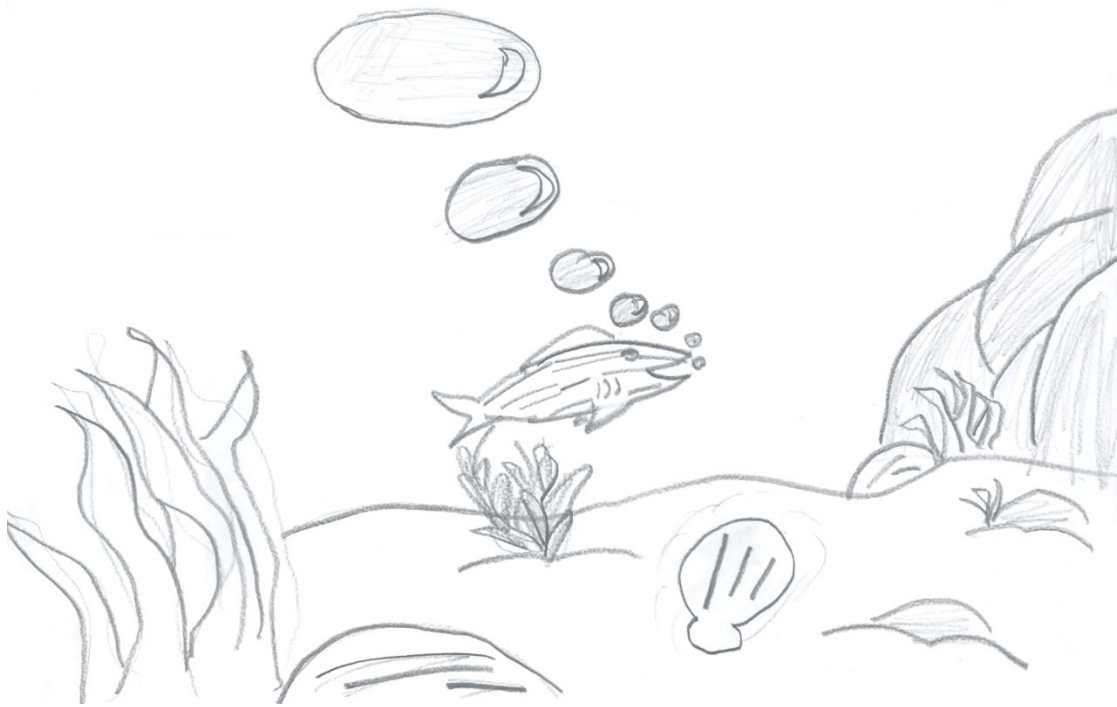

TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for May 20, 2019

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2021, Kirk M. Beckert of Richardson, Texas (Mr. Beckert is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2021, Veronica M. Hagerty, Ph.D. of Houston, Texas (Dr. Hagerty is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2021, Nientzu Hsia of Round Rock, Texas (replacing Laura D. Dixon of San Antonio whose term expired).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2021, Roger E. O'Dell of El Paso, Texas (Mr. O'Dell is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2021, Clara L. Stevens of Royse City, Texas (replacing Sonal S. Buchar of Sugar Land whose term expired).

Appointed as vice chairman of the OneStar National Service Commission, for a term to expire at the pleasure of the Governor, Annette G. Juba of Austin, Texas.

Appointed to the OneStar Foundation, for a term to expire March 15, 2020, Elexis Grimes of Cedar Park, Texas (replacing Helen Soto Knaggs of Austin whose term expired).

Appointed to the OneStar Foundation, for a term to expire March 15, 2020, Michael R. Parker of Weatherford, Texas (replacing Bruce H. Esterline of Dallas whose term expired).

Appointed to the OneStar Foundation, for a term to expire March 15, 2021, Robert G. Wright, II of Dallas, Texas (Mr. Wright is being reappointed).

Appointed to the OneStar Foundation, for a term to expire March 15, 2022, Yvonne S. Brown of Raymondville, Texas (Ms. Brown is being reappointed).

Appointed to the OneStar Foundation, for a term to expire March 15, 2022, Benjamin A. Montañez of San Antonio, Texas (Mr. Montañez is being reappointed).

Appointed to the OneStar Foundation, for a term to expire March 15, 2022, Randel H. Skinner of Dallas, Texas (Mr. Skinner is being reappointed).

Appointed as vice chairman of the OneStar Foundation, for a term to expire at the pleasure of the Governor, Yvonne S. Brown of Raymondville, Texas.

Appointed as chairman of the OneStar Foundation, for a term to expire at the pleasure of the Governor, Robert G. Wright, II of Dallas, Texas.

Appointments for May 21, 2019

Appointed to the Texas Academy of Mathematics and Science Advisory Board, for a term to expire May 2, 2024, Chantel C. Bailey of McKinney, Texas (replacing Cilla Bruun, Ed.D. of Rockport whose term expired).

Appointments for May 22, 2019

Appointed to the Jobs and Education for Texas Grant Program Advisory Board, for a term to expire June 19, 2019, William P. Conley of Wimberley, Texas (replacing Gerardo A. Interiano of Austin who resigned).

Appointments for May 23, 2019

Appointed as the Student Regent for the Texas A&M University System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, Levi D. McClenny of College Station, Texas (replacing Ervin A. Bryant of Spring whose term expired).

Appointed as the Student Regent for the Texas Tech University System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, Sean M. Lewis of Lubbock, Texas (replacing Jane E.B. Gilmore of Dallas whose term expired).

Appointed as the Student Regent for the University of Texas System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, Daniel R. Dominguez of El Paso, Texas (replacing Brittany E. Jewell of Pearland whose term expired).

Appointed as the Student Regent for the University of Houston System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, John D. Fields of Houston, Texas (replacing Andrew Z. Teoh of Houston whose term expired).

Appointed as the Student Regent for the Texas State University System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, Katey E. McCall of Orange, Texas (replacing Leanna K. Mouton of Houston whose term expired).

Appointed as the Student Regent for the University of North Texas System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, Alexandra Harrel of Corpus Christi, Texas (replacing Amanda M. Pajares of Dallas whose term expired).

Appointed as the Student Regent for the Stephen F. Austin State University System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, Zoe C. Smiley of Nacogdoches, Texas (replacing Katelyn D. Childress of Lumberton whose term expired).

Appointed as the Student Regent for the Texas Southern University System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, Ashley Pleas Johnson of Houston, Texas (replacing Kernard D. Jones of Houston whose term expired).

Appointed as the Student Regent for the Midwestern State University System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, Andrew W. Wolf of Wichita Falls, Texas (replacing Leia De La Garza of Wichita Falls whose term expired).

Appointed as the Student Regent for the Texas Woman's University System Board of Regents, effective June 1, 2019, for a term to expire May 31, 2020, Lexi M. D'Abrosca of Carrollton, Texas (replacing Emily C. Galbraith of Waxahachie whose term expired).

Appointed as the Student Representative for the Texas Higher Education Coordinating Board, effective June 1, 2019, for a term to expire May 31, 2020, Lauren C. McKenzie of Montgomery, Texas (replacing Michelle Q. Tran of Houston whose term expired).

Appointments for May 29, 2019

Appointed to the State Commission on Judicial Conduct, for a term to expire November 19, 2023, Valerie E. Ertz of Dallas, Texas (replacing Amy F. Suhl of Sugar Land who was not confirmed).

Appointed to the State Commission on Judicial Conduct, for a term to expire November 19, 2023, Frederick C. Tate of Colleyville, Texas (replacing Maricela Alvarado of Harlingen who was not confirmed).

Greg Abbott, Governor

TRD-201901658



PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 11. TEXAS OFFICE OF PRODUCE SAFETY

The Texas Department of Agriculture (TDA or the Department) proposes new Title 1, Part 4, Chapter 11, Texas Office of Produce Safety, Subchapter A, General Provisions, §§11.1-11.4, relating to General Provisions; Subchapter B, Coverage and Exemptions, §§11.20-11.22; and Subchapter C, Compliance and Enforcement, §§11.40-11.43. The proposed new rules are for TDA's administration of the Food Safety Modernization Act (FSMA), P.L. 111-353, and the rules established by the United States Food and Drug Administration (FDA) to comply with FSMA for produce, titled "Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption," 21 CFR Part 112, commonly referred to as the Produce Safety Rule. By working cooperatively with producers, the Produce Safety Rule helps shift the food safety regulations from a reactive system that focuses on responding to contamination to a proactive one that focuses on preventing them. The proposed rules establish definitions; clarify persons covered by the Produce Safety Rule; and set forth the compliance and enforcement framework.

Through a cooperative agreement with the FDA, the Department is administering the Produce Safety Rule to advance efforts for a nationally integrated food safety system. As part of the cooperative agreement, the Department established the Texas Office of Produce Safety (TOPS) within TDA to administer the Produce Safety Rule. As part of its duties, TOPS will enhance current produce programs within the Department to support the safe production of fresh fruits and vegetables. Additionally, TOPS offers additional outreach programs to educate producers and promote understanding and compliance with the requirements of the Produce Safety Rule.

The proposal is necessary for the administration of the Produce Safety Rule, and to protect Texas consumers and producers by ensuring that food grown, harvested, and packed for human consumption meets the requirements of the rule. The proposed rules are designed to minimize the risk of serious adverse health consequences or death from consumption of contaminated produce. Additionally, the proposal establishes recordkeeping requirements that, in the event of a foodborne illness outbreak, enable TOPS to review producer records and work with FDA to track the potential sources of contamination. TDA will implement the proposed rules while working in cooperation with the fresh fruit and vegetable industries in Texas, to reassure con-

sumers in Texas and nationwide that Texas produce meets national standards designed to protect individuals and families from foodborne illness.

Prior to filing this proposal, the Department held stakeholder meetings across the state to take input on TDA's implementation of the standards contained in the FDA's Produce Safety Rule. The attendees, which included local producers, industry representatives and food retailers, provided valuable feedback regarding the administration of the national produce safety program in Texas. Stakeholder recommendations were taken under consideration in the development of the proposed rules.

Stakeholders and the public recognize that a foodborne outbreak could cause wide-spread illness in humans and have a significant negative impact on the state's economy, as well as that of local communities. Additionally, all businesses in the produce continuum such as producers, processors, transporters, and restaurants that could potentially serve contaminated produce, may suffer economic damages associated with possible recalls and litigation. Other organizations that grow, distribute, or sell the same type of produce may see decreased demand resulting in a reduction in sales volume and market share throughout the nation. Thus, these proposed regulations protect public health, welfare and safety in addition to furthering the state and industry's economic interests.

Industry and the public are generally aware that the Produce Safety Rule includes national standards established by the FDA to comply with FSMA, and that covered farms within the State of Texas are required to follow these standards. Since the inception of the produce safety program, TDA has worked, and continues to work, to protect the public interest while minimizing the impact and cost of this program on producers.

Richard De Los Santos, Director of the Texas Office of Produce Safety, has determined that there will be no fiscal impact to state government as a result of implementing the proposed rules. The program and all associated direct and indirect costs are fully funded by the FDA. There will be no fiscal impact to local governments as a result of the implementation of this proposal.

Mr. De Los Santos has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit as a result of administering the proposed rules will be to safeguard consumers and provide them with reasonable assurance that produce and farms in Texas covered by the Produce Safety Rule meet national standards intended to minimize the risk of serious adverse health consequences or death from consumption of contaminated produce. As with many federal regulations, affected producers and industry will be required to absorb compliance costs associated with the Produce Safety Rule. However, TDA lacks sufficient data to quantify the effect on small and micro-businesses at this time. The cost of com-

pliance with the Produce Safety Rule for affected producers will depend on various factors, including the size of the operation and whether it currently utilizes documentation and other tools necessary for compliance. TDA does not anticipate that there will be an adverse fiscal impact on rural communities related to the implementation of this proposal. Any potential increases in the cost of doing business will be offset by the marketing and sales opportunities for Texas producers due to increased consumer confidence in products as a result of the implemented safety standards.

Mr. De Los Santos has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.021. As a result of implementing the proposal, for the first five years the proposed rules are in effect:

- (1) the Texas Office of Produce Safety was created;
- (2) an additional 10 employee positions will be created over the course of 5 years, and no existing Department staff positions will be eliminated; and
- (3) there will be an increase in future legislative appropriations to the Department.

Additionally, Mr. De Los Santos has determined that for the first five years the proposed rules are in effect:

- (1) there will be no increase or decrease in fees paid to the Department, as this program is funded by the FDA, and TDA is not required to assess license or inspection fees in order to implement or finance this program;
- (2) new regulations will be created by the proposal;
- (3) there will be an increase to the number of individuals subject to the proposal, as this is a new program; however, many farms may claim a qualified exemption from the requirements of this proposal; and
- (4) the proposal will positively affect the Texas economy by protecting the public health and Texas fruit and vegetable industry by helping prevent foodborne illness outbreaks, shifting food safety regulations from a system that focuses on responding to contaminations to one that focuses on preventing them.

Written comments on the proposal may be submitted to Richard De Los Santos, Director of the Texas Office of Produce Safety, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711; or by email to Richard.DeLosSantos@TexasAgriculture.gov. Comments must be received no later than July 12, 2019.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§11.1 - 11.4

The proposal is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 of the Texas Agriculture Code are affected by the proposal.

§11.1. Definitions.

In addition to the definitions set forth in 21 CFR Part 112, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Anniversary Date--The last day following two years from the issuance of a Qualified Exemption.

(2) CFR--Code of Federal Regulations.

(3) Department--The Texas Department of Agriculture.

(4) Egregious condition--A practice, condition, or situation on a covered farm or in a packing facility that is undertaken as part of a covered activity that is reasonably likely to lead to:

(A) serious adverse health consequences or death from the consumption of or exposure to covered produce; or

(B) an imminent public health hazard.

(5) FDA--United States Food and Drug Administration.

(6) Inspection--An initial or follow up inspection conducted by TOPS for the purpose of inspecting covered produce, a covered farm, or records related to the Produce Safety Rule.

(7) Produce Safety Rule--21 CFR Part 112: Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption, including any additions, amendments or revisions thereto.

(8) Raw agricultural commodity (RAC)--The term "raw agricultural commodity" is defined in Section 201(r) of the Federal Food, Drug and Cosmetic Act and means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing. See 21 U.S.C. §321(4) and 21 CFR §112.3.

(9) TOPS--Texas Office of Produce Safety.

§11.2. Covered Produce.

(a) Covered produce. Covered produce includes produce listed in 21 CFR §112.1.

(b) Produce that is not covered.

(1) The following produce is "not covered" by the Produce Safety Rule under 21 CFR §112.2(a):

(A) produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management;

(B) produce that is not a RAC; and

(C) produce that is rarely consumed raw, specifically the produce on the following exhaustive list: Asparagus; beans, black; beans, great Northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets, garden (roots and tops); beets, sugar; cashews; cherries, sour; chickpeas; cocoa beans; coffee beans; collards; corn, sweet; cranberries; dates; dill (seeds and weed); eggplants; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; squash, winter; sweet potatoes; and water chestnuts.

(2) A farm which solely produces produce that is "not covered" is not subject to the Produce Safety Rule or this chapter.

(3) Produce is eligible for exemption from the requirements of this part if the produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance.

§11.3. Covered Farms.

Per 21 CFR §112.4, the following farms are covered by the Produce Safety Rule and this chapter:

(1) a farm which produces covered produce sold during the previous 3-year period in an amount more than \$25,000 (on a rolling basis), adjusted for inflation using 2011 as the baseline year for calculating the adjustment;

(2) a farm which has its primary production that is devoted to growing, harvesting (such as hulling or shelling), packing, and/or holding of RAC; or

(3) a farm which performs covered activities, including manufacturing/processing of covered produce on a farm, but only to the extent that such activities are performed on RAC.

§11.4. FDA Coordinated Outbreak Response and Evaluation ("CORE") Network.

(a) Subject to its cooperation agreement with FDA, TOPS will work in coordination with the FDA's Coordinated Outbreak Response and Evaluation ("CORE") Network to respond to an outbreak which has been identified by CORE.

(b) FDA will be the lead agency conducting on-site visits and inspections related to an outbreak.

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

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901642

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 463-4075



SUBCHAPTER B. COVERAGE AND EXEMPTIONS

4 TAC §§11.20 - 11.22

The proposal is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 of the Texas Agriculture Code are affected by the proposal.

§11.20. Qualified Exemption.

(a) TOPS may conduct a pre-assessment review to determine whether a farm is covered by the Produce Safety Rule and/or eligible for a Qualified Exemption.

(1) A covered farm is eligible for a Qualified Exemption if it meets the requirements of 21 CFR §112.5.

(2) A covered farm which is eligible for a Qualified Exemption under 21 CFR §112.5, must establish and maintain adequate records demonstrating compliance with criteria necessary for Qualified Exemption as required by 21 CFR §112.7(b).

(3) A covered farm eligible for a Qualified Exemption is subject to the modified requirements set forth in 21 CFR §112.6, and this chapter.

(b) Federal law determines whether or not a farm is subject to the Produce Safety Rule. Failure to permit TOPS to conduct a pre-assessment review does not exclude a farm from being subject to this chapter or the Produce Safety Rule.

§11.21. Verification of Exemption.

(a) A covered farm shall be required to reaffirm eligibility for a Qualified Exemption upon its Anniversary Date. Qualified Exemption determinations for covered farms shall be valid for two years from the date of verification by TOPS.

(b) TDA will provide notice of the required reaffirmation and renewal of a Qualified Exemption by sending a Qualified Exemption Verification Form to the producer's last known address, as reflected in TDA's records, at least 30 days prior to the Anniversary Date.

(c) Failure to return a Qualified Exemption Verification Form within 45 days after the Anniversary Date shall result in a required on-site visit by TOPS to reevaluate exemption, coverage, or eligibility for a qualified exemption. Failure to return a Qualified Exemption Verification Form within 60 days of the Anniversary Date shall result in the presumption by TOPS that the farm is subject to all requirements of the Produce Safety Rule and this chapter.

(d) TOPS reserves the right to schedule, at any time, an on-site visit to verify whether a farm is exempt, covered, or eligible for a Qualified Exemption.

§11.22. Change in Eligibility.

If a farm's qualification for an exemption or eligibility for a Qualified Exemption changes, or if its Qualified Exemption is withdrawn by the FDA as outlined in 21 CFR Part 112, Subpart R, the farm will be considered "Covered" and will be subject to all requirements of the Produce Safety Rule and this chapter.

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

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901643

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 463-4075



SUBCHAPTER C. COMPLIANCE AND ENFORCEMENT

4 TAC §§11.40 - 11.43

The proposal is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 of the Texas Agriculture Code are affected by the proposal.

§11.40. Right of Entry.

(a) Right of Entry to Determine Coverage or Verify Exceptions. TOPS may enter the premises of a farm growing produce during normal business hours to determine coverage and/or verify exceptions to the Produce Safety Rule.

(b) Right of Entry to Conduct Inspections. TOPS may enter all locations or areas of a covered farm or Qualified Exempt farm during operating hours where there are activities, conditions, produce, and equipment, or at any other location where covered activities occur, to conduct inspections.

(c) Egregious Condition. TOPS may enter the premises of a covered and exempt/or Qualified Exempt farm at any time to conduct an inspection in response to an egregious condition at all locations or areas where there are activities, conditions, produce, and equipment, or at any other location where covered activities occur.

(d) Failure to Comply. Refusal to allow a TOPS inspection, or interfering with TOPS' ability to perform its duties under this section, shall result in a violation, as stated in §11.41 of this chapter, relating to Enforcement and Penalties.

§11.41. Enforcement and Penalties.

(a) The following actions may be taken, and penalties may be assessed in response to findings of violations of the Produce Safety Rule.

Figure: 4 TAC §11.41(a)

(b) A corrective action plan must be developed by the producer and approved by TOPS in response to one or more findings by TOPS of a violation of the Produce Safety Rule. The producer must implement the corrective action plan and demonstrate, upon a follow up inspection by TOPS, that it has fully and permanently corrected the violations of the Produce Safety Rule made the subject of the findings by TOPS in its previous inspection.

§11.42. Stop Sale.

(a) TOPS may issue a stop sale order upon a finding of an egregious condition or for repeated failure to comply with one or more corrective action plans which may result in risk to public health.

(b) A stop sale order shall apply to all covered produce, lots, batches, or bins that are determined to be non-compliant, at-risk, or affected by an egregious condition. A stop sale order may also include covered produce that is stored or in transit.

§11.43. Complaint Investigation.

(a) Any person with reasonable cause to believe that a producer has violated the Produce Safety Rule or this chapter may file a complaint with TOPS.

(b) TOPS may, in its sole discretion, investigate the complaint and make a full written report.

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

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901644

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 463-4075

◆ ◆ ◆
TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 223. FEES

22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) proposes amendments to §223.1, concerning Fees. The amendments are proposed under the authority of the Texas Occupations Code §301.151 and §301.155, Texas Health and Safety Code §481.0756(e), and HB 1, enacted by the 86th Texas Legislature, effective September 1, 2019.

In its budget request for the 2020-2021 biennium, the Texas Legislature approved the Board's request for \$777,236 in exceptional items, in addition to its base budget of \$28,271,031. As such, the Board will be required to raise enough revenue to cover the Board's base budget (which includes obligatory payments for employee health and retirement benefits), exceptional items (which includes temporary staffing costs, nurse salary adjustments, and the executive director salary increase), and additional costs associated with the implementation of House Bill (HB) 2174, which was passed during the legislative session, and becomes effective September 1, 2019.

HB 2174 relates, in part, to the issuance of electronic prescriptions for controlled substances. The bill requires licensing agencies to develop a waiver process for practitioners who are unable to issue electronic prescriptions for statutorily defined reasons. There are currently 25,410 advanced practice registered nurses with prescriptive authorization in Texas that may be affected by the bill's new requirements. Further, the Board experiences an approximate 6.6% to 20.7% increase in the number of new prescriptive authorizations issued each year. Based upon the potential volume of waivers the Board may receive as a result of the requirements of HB 2174, the Board anticipates that it will need to employ one additional staff member, full time, to review and respond to the waiver requests. The Board estimates the cost associated with an additional staff member to be approximately \$59,629.50 each fiscal year.

In order to meet the revenue requirements approved by the legislature, the Board has determined that it will be necessary to increase its current licensure renewal fees. The Board's current renewal fee for licensed vocational nurses is \$42 each biennium; \$65 for registered nurses each biennium; and \$50 each biennium for advanced practice registered nurses. The Board anticipates that it will need to raise licensed vocational nurse renewal fees by \$3, making the new renewal fee \$45 each biennium; registered nurse renewal fees by \$3, making the new renewal fee \$68 each biennium; and advanced practice registered nurse renewal fees by \$4, making the new renewal fee \$54 each biennium.

The proposed amendments also clarify that more than one fee may apply, depending on an individual's particular situation. For example, an advanced practice registered nurse wishing to renew his/her advanced practice registered nurse license must also renew his/her Texas registered nurse license at the same time. This would result in the advanced practice registered nurse license renewal fee and the registered nurse license renewal fee applying to that individuals' biennial renewal. The proposed amendments do not alter the Board's current requirements in this

regard, but instead, clarify how the Board's current fee structure functions.

The proposed amendments are necessary to effectuate the required licensure renewal fee increases by September 1, 2019.

Section by Section Overview. Proposed amended §223.1(a)(3)(A) sets the fee for licensure renewal (each biennium) for registered nurses at \$68. Proposed amended §223.1(a)(3)(B) sets the fee for licensure renewal (each biennium) for licensed vocational nurses at \$45. Proposed amended §223.1(a)(11) sets the fee for licensure renewal (each biennium) for advanced practice registered nurses at \$54. Proposed amended §223.1(b) clarifies that more than one fee may apply to a single action.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there may be an approximate \$535,585 total annual increase in revenue to state government. This estimate is based on the following factors. The proposed amendments will increase the renewal fees for licensed vocational nurses from \$42 to \$45. The proposed amendments will also increase the renewal fees for registered nurses from \$65 to \$68. Finally, the proposed amendments will increase the renewal fees for advanced practice registered nurses from \$50 to \$54. Based upon a biennial renewal, the Board estimates that 50,000 licensed vocational nurses will renew their licenses, per fiscal year, from 2020 through 2021. Based upon a biennial renewal, the Board estimates that 157,000 registered nurses will renew their licenses in fiscal year 2020 and 160,000 in 2021. Based upon a biennial renewal, the Board estimates that 14,000 advanced practice registered nurses will renew their licenses, per fiscal year, from 2020 through 2021. These estimates will result in an approximate \$535,585 annual increase in revenue to state government.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the generation of monies sufficient to comply with the budgetary requirements established by the legislature. Further, the increase in fees will ensure the Board is able to continue to provide essential functions to its constituents and the public, including licensing, enforcement, public protection, and educational services. Finally, the increase in fees will ensure the Board is able to meet its obligations under the requirements of HB 2174.

Potential Costs for Persons Required to Comply with the Proposal. There are some anticipated costs associated with the proposal. The Board anticipates that the proposal will result in an increase of \$3 for each registered nurse and licensed vocational nurse that renews his/her license, each biennium. This is an average increase of \$1.50 per year. The Board anticipates that the proposal will result in an increase of \$4 for each advanced practice registered nurse that renews his/her advanced practice registered nurse license, each biennium. This is an average increase of \$2.00 per year. Because an advanced practice registered nurse is required to pay the renewal fee for his/her Texas registered nurse license and his/her advanced practice registered nurse license at the same time, the proposal is expected to result in a total increase to these nurses of \$7 each biennium, or \$3.50 each year. These costs are a direct result of the budgetary requirements established by the legislature and the implementation costs of HB 2174.

Economic Impact Statement and Regulatory Flexibility Analysis for Small Businesses, Micro Businesses, and Rural Communities. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees.

The Government Code §2006.001(1-a) defines a rural community as a municipality with a population of less than 25,000.

Only individuals are subject to the proposal. As such, the proposal does not impose any new costs of compliance on any entity that meets the definitions of a small business, micro business, or rural community. Therefore, the Board is not required to prepare an economic impact statement and regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administrative Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal will allow for the creation of one new, full-time employee position to comply with the requirements of HB 2174; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal implements an increase in renewal fees paid to the Board, in an amount of \$3.50 or less, per affected individual, per year; (v) the proposal does not create a new regulation; (vi) the proposal amends existing renewal rates for all levels of nursing licensure in Texas; (vii) the proposal does not extend to new entities not previously subject to the rule; and (viii) the proposal may have a slight effect on the state's economy, only to the extent the increase in renewal fees may generate an additional \$535,585 in revenue to state government.

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

Request for Public Comment. Comments on this proposal should be submitted to both Mark Majek, Director of Operations, and James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to mark.majek@bon.texas.gov and dusty.john-

ston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §301.151 and §301.155 and the Health and Safety Code §481.0756(e).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 481.0756(e) provides that each regulatory agency that issues a license, certification, or registration to a prescriber shall adopt rules for the granting of waivers consistent with the board rules adopted under Subsection (d).

Cross Reference To Statute. This proposal affects the Texas Occupations Code §301.151 and §301.155, Texas Health and Safety Code §481.0756(e), and HB 1, enacted by the 86th Texas Legislature.

§223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

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

(3) Licensure renewal (each biennium):

(A) Registered Nurse (RN): \$68 [\$65];

(B) Licensed Vocational Nurse (LVN): \$45 [\$42];

(4) - (10) (No change.)

(11) Advanced Practice Nurse renewal: \$54 [\$50];

(12) - (21) (No change.)

(b) All fees are non-refundable. More than one fee listed herein may apply in a given situation.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901628

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 305-6822



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.4

The Texas Board of Physical Therapy Examiners proposes amending §322.4. Practicing in a Manner Detrimental to the Public Health and Welfare pursuant to the amendment of the PT Practice Act, Occupations Code Chapter 453 pertaining to the repeal of physical therapy facility registration and annual renewal in SB 317 during the 85th Legislative Session.

The amendment is proposed in order to eliminate failure to register or renew a facility registration and practicing in an unregistered facility from the list of practices considered detrimental to the public health and welfare.

Fiscal Note

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will no loss or gain of revenue to the state government. No fiscal implication to units of local government is anticipated.

Public Benefits and Costs

Mr. Maline has also determined that for the first five-year period this amendment is in effect there will be no negative impact as the facility registration process no longer serves a public safety purpose, and there will be no economic cost to the public.

Local Employment Economic Impact Statement

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

Small and Micro-Businesses and Rural Communities Impact

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

Government Growth Impact Statement

The impact of the proposed amendment on government growth is as follows: will eliminate disciplinary action based on the requirement of physical therapy facility registration and annual renewal; will not require the creation of new employee positions or the elimination of existing employee positions; will not increase or decrease future legislative appropriations to the agency; will decrease the fees paid to the agency as the result of noncompliance to physical therapy facility registration and annual renewal; will eliminate the number of individuals subject to the rule's applicability; and will not adversely affect the state's economy. The proposed rule amendment does not expand existing regulations. The amendment does not create a new regulation.

Takings Impact Assessment

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

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendment will not increase costs to regulated persons and are necessary to implement legislation that amended the Physical Therapy Practice Act during the 85th Legislature.

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

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute: The proposed amendment implements Government Code Chapter 453 as amended during the 85th Legislative Session.

§322.4. *Practicing in a Manner Detrimental to the Public Health and Welfare.*

(a) The board may deny a license to or discipline an applicant/respondent who is found to be practicing in a manner detrimental to the public health and welfare. ~~[The board may deny a registration for a physical therapy facility to an applicant or discipline a physical therapy facility required to be registered by the act which is found to be practicing in a manner detrimental to the public health and welfare.]~~

(b) Practicing in a manner detrimental to the public health and welfare may include, but is not limited to, the following:

(1) - (13) (No change.)

~~[(14) failing to register a physical therapy facility which is not exempt or failing to renew the registration of a physical therapy facility which is not exempt;]~~

~~[(15) practicing in an unregistered physical therapy facility which is not exempt;]~~

(14) ~~[(16)]~~ failing to notify the board of any conduct by another licensee which reasonably appears to be a violation of the Practice Act and rules, or aids or causes another person, directly or indirectly, to violate the Practice Act or rules of the board;

(15) ~~[(17)]~~ abandoning or neglecting a patient under current care without making reasonable arrangements for the continuation of such care;

(16) ~~[(18)]~~ failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations; and

(17) ~~[(19)]~~ violating the rules of the Physical Therapy Licensure Compact if holding a Compact privilege to practice in Texas.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901625

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: July 14, 2019

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



CHAPTER 344. ADMINISTRATIVE FINES AND PENALTIES

22 TAC §344.1

The Texas Board of Physical Therapy Examiners proposes amending §344.1, Administrative Fines and Penalties pursuant to the amendment of the PT Practice Act, Occupations Code Chapter 453 pertaining to the repeal of physical therapy facility registration and annual renewal in SB 317 during the 85th Legislative Session.

The amendment is proposed in order to establish a process for expungement of facility-related administrative violations from a licensee's record.

Fiscal Note

John P. Maline, Executive Director, has determined that for the first five-year period this amendment is in effect there will no loss or gain of revenue to the state government. No fiscal implication to units of local government is anticipated.

Public Benefits and Costs

Mr. Maline has also determined that for the first five-year period this amendment is in effect there will be no negative impact as the facility registration process no longer serves a public safety purpose, and there will be no economic cost to the public.

Local Employment Economic Impact Statement

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

Small and Micro-Businesses and Rural Communities Impact

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

Government Growth Impact Statement

The impact of the proposed amendment on government growth is as follows: will allow expungement of disciplinary action based on the requirement of physical therapy facility registration and annual renewal; will not require the creation of new employee positions or the elimination of existing employee positions; will not increase or decrease future legislative appropriations to the agency; will decrease the fees paid to the agency as the result of noncompliance to physical therapy facility registration and annual renewal; will eliminate the number of individuals subject to the rule's applicability; and will not adversely affect the state's economy. The proposed rule amendment does not expand existing regulations. The amendment does not create a new regulation. The proposed rule eliminates a government program.

Takings Impact Assessment

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

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendment will not increase costs to regulated persons and are necessary to implement legislation that amended the Physical Therapy Practice Act during the 85th Legislature.

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

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute: The proposed amendment implements Government Code Chapter 453 as amended during the 85th Legislative Session.

§344.1. *Administrative Fines and Penalties.*

(a) (No change.)

(b) The board may expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet the registration requirements of Occupations Code, Section 453.213, as that section existed on January 1, 2019. The board may not expunge a record under this section after September 1, 2021.

~~[(b) Any facility providing physical therapy services in violation of the Texas Physical Therapy Practice Act, shall be, at the discretion of the Board, subject to the following penalties:]~~

~~[(1) The Board may impose suspension or revocation of a facility registration, or other disciplinary action.]~~

~~[(2) The Board may assess fines, not to exceed \$200 for each day of the offense, based on the following schedule:]~~

~~[(A) first offense: \$200-\$3,600;]~~

~~[(B) subsequent offense: \$200-\$10,000.]~~

(c) - (e) (No change.)

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901626

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: July 14, 2019

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



CHAPTER 347. REGISTRATION OF PHYSICAL THERAPY FACILITIES

22 TAC §§347.1, 347.2, 347.4 - 347.6, 347.8, 347.9, 347.11 - 347.13, 347.15

The Texas Board of Physical Therapy Examiners proposes repealing Chapter 347, Registration of Physical Therapy Facilities, pursuant to the amendment of the PT Practice Act, Occupations Code, Chapter 453, pertaining to the repeal of physical therapy facility registration and annual renewal in SB 317 during the 85th Legislative Session.

The repeal is proposed in order to eliminate all rules pertaining to the registration and renewal of physical therapy facilities.

Fiscal Note

John P. Maline, Executive Director, has determined that for the first five-year period this repeal is in effect there will be a probable \$701,580 loss of revenue to the state government beginning with FY 2020. No fiscal implication to units of local government is anticipated. Mr. Maline anticipates a positive economic impact, though negligible, to owners of physical therapy facilities as there will no longer be a cost of \$215 associated with registering and \$220 for renewing the registration of physical therapy facilities annually.

Public Benefits and Costs

Mr. Maline has also determined that for the first five-year period this repeal is in effect there will be no negative impact as the facility registration process no longer serves a public safety purpose, and there will be no economic cost to the public.

Local Employment Economic Impact Statement

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

Small and Micro-Businesses and Rural Communities Impact

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

Government Growth Impact Statement

The impact of the proposed repeal on government growth is as follows: will eliminate the requirement of physical therapy facility registration and annual renewal; will not require the creation of new employee positions or the elimination of existing employee positions; will not increase or decrease future legislative appropriations to the agency; will decrease the fees paid to the agency by a probable \$701,580 annually from physical therapy facility registration and annual renewal; will eliminate the number of individuals subject to the rule's applicability in that owners of physical therapy facilities will no longer be subject to a registration and annual renewal requirement; and will adversely affect the state's economy by a probable \$701,580 loss of annual revenue associated with the registration and annual renewal of physical therapy facilities. The proposed rules do not expand existing regulations, but do repeal a chapter of the existing rules. The amendment does not create a new regulation. The proposed rule eliminates a government program.

Takings Impact Assessment

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

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed repeal because the repeal of rules will not increase costs to regulated persons and are necessary to implement legislation that amended the Physical Therapy Practice Act during the 85th Legislature.

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

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute: The proposed amendment implements Government Code Chapter 453 as amended during the 85th Legislative Session.

§347.1. *Definitions.*

§347.2. *Requirement for Practice Setting of Licensees.*

§347.4. *Requirements for Registration Application.*

§347.5. *Requirements for Registered Facilities.*

§347.6. *Exemptions to Registration.*

§347.8. *Change in Facility Ownership.*

§347.9. *Renewal of Registration.*

§347.11. *Failure to Register.*

§347.12. *Restoration of Registration.*

§347.13. *Cancellation of Registration.*

§347.15. *Disciplinary Action.*

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901627

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: July 14, 2019

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



PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §§651.1 - 651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes amending Chapter 651, concerning Fees, pursuant to the amendment of the Executive Council of Physical Therapy and Occupational Therapy Examiners Act, Title 3, Subtitle H, Chapter 452 of the Occupations Code, pertaining to the repeal of physical therapy and occupational therapy facility registration and annual renewal in SB 317, 85th Legislative Session.

The amendments in Chapter 651 are proposed to discontinue the fees associated with the application, renewal, and associated fees for physical and occupational therapy facilities.

Fiscal Note

John Maline, Executive Director, has determined that for each year of the first five years the amendments are in effect there will be a probable \$1,063,000 loss of revenue per year to state government beginning with FY2020. No fiscal implication to units of local government is anticipated. Mr. Maline anticipates a positive economic impact, though negligible, to owners of physical therapy and occupational therapy facilities, as there will no longer be a cost associated with registering and renewing annually the registration of therapy facilities.

Public Benefit and Costs

Mr. Maline has determined that for the first five-year period these amendments are in effect there will be no negative impact, as the facility registration process no longer serves a public safety purpose, and will be at no economic cost to the public.

Local Employment Economic Impact Statement

Mr. Maline has determined that the amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

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

Takings Impact Assessment

The proposed amendments will not impact private real property as defined by Tex. Gov't Code §2001.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Government Growth Impact Statement

The impact of the proposed amendments on government growth during the first five years the amendments would be in effect is as follows: will eliminate the requirement of physical therapy and occupational therapy facility registration and annual renewal; will not require the creation for new employee positions or the elimination of existing employee positions; will not increase or decrease future legislative appropriations to the agency; will decrease the fees paid to the agency by a probable \$1,063,000 annually from physical therapy and occupational therapy facility registration and annual renewal; will eliminate the number of individuals subject to the rule's applicability in that owners of physical therapy and occupational therapy facilities will no longer be subject to a registration and annual renewal requirement; and will affect the state's economy by a probable \$1,063,000 that are not paid in fees to the state government. The proposed rule amendments do not expand existing regulations.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed amendments because they do not impose a cost, do not increase costs to regulated persons, and is necessary to implement SB 317, 85th Regular Legislative Session.

Public Comment

Comments on the proposed amendments may be submitted electronically to John@ptot.texas.gov or in writing to Mr. John Maline, Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners, Suite 2-510, 333 Guadalupe, Austin, Texas 78701. Comments must be

received no later than 30 days from the date that the proposed amendments is published in the *Texas Register*.

Statutory Authority

The amendments are proposed under the Executive Council of Physical Therapy and Occupational Therapy Examiners Act, Title 3, Subtitle H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452 of the Occupations Code is affected by this proposal.

§651.1. Occupational Therapy Board Fees.

(a) - (i) (No change.)

~~[(j) Registration Fees, All Facilities--\$215.]~~

~~[(k) Renewal fees, All Facilities--\$220.]~~

~~[(t) Late Fees--All Facilities.]~~

~~[(1) Late 90 days or less--a fee equal to one-half of the renewal fee; in addition to the renewal fee.]~~

~~[(2) Late more than 90 days but less than one year--a fee equal to the renewal fee; in addition to the renewal fee.]~~

~~[(m) Facility Restoration--Late one year or more--a restoration fee:]~~

~~[(1) Cancelled registration--a fee equal to the facility renewal fee.]~~

~~[(2) Expired registration--a fee that is double the facility renewal fee.]~~

§651.2. Physical Therapy Board Fees.

(a) - (j) (No change.)

~~[(k) Facility Registration, All Facilities--\$215.]~~

~~[(t) Facility Renewal, All Facilities--\$220.]~~

~~[(m) Late Fees--All Facilities.]~~

~~[(1) Late 90 days or less--a fee equal to one-half of the renewal fee; in addition to the renewal fee.]~~

~~[(2) Late more than 90 days but less than one year--a fee equal to the renewal fee; in addition to the renewal fee.]~~

~~[(n) Facility Restoration--Late one year or more--a restoration fee:]~~

~~[(1) Cancelled registration--a fee equal to the facility renewal fee.]~~

~~[(2) Expired registration--a fee that is double the facility renewal fee.]~~

~~[(k) [(o)] Compact Privilege Fee~~

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

§651.3. Administrative Services Fees.

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

~~[(e) Duplicate of Facility Registration Certificate--\$30.]~~

~~[(c) [(d)] Reinstatement of Suspended or Revoked License--\$50.~~

~~[(d) [(e)] Insufficient Funds Check Fee--\$25.~~

~~[(e) [(f)] ACH Return Fee--\$25.~~

~~[(f) [(g)] Preliminary Criminal History Evaluation Letter--\$50.~~

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901629

John P. Maline

Executive Director

Executive Council of Physical Therapy and Occupational Therapy Examiners

Earliest possible date of adoption: July 14, 2019

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

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 34 TAC §25.302 and §25.303 are not included in the print version of the Texas Register. The figure is available in the on-line version of the June 14, 2019, issue of the Texas Register.)

The Teacher Retirement System of Texas (TRS) proposes amendments to §25.162, relating to State Personal or Sick Leave Credit in Title 34, Part 3, Chapter 25, Subchapter L, of the Texas Administrative Code and to §25.302, relating to Calculation of Actuarial Costs of Service Credit, and §25.303, relating to Calculation of Actuarial Cost for Purchase of Compensation Credit, in Title 34, Part 3, Chapter 25, Subchapter P of the Texas Administrative Code.

BACKGROUND AND PURPOSE

Each rule TRS proposes to amend currently incorporates one or more actuarial table used to calculate the cost of a service credit or compensation credit purchase. The proposed amendments incorporate new actuarial tables into each rule that have been updated based on the TRS Board of Trustees (Board) most recently approved mortality assumptions and new investment return assumption. The new actuarial tables were prepared by the TRS actuary of record, Gabriel, Roeder, Smith & Company.

Proposed amended §25.162 updates the actuarial table for the purchase of one year of service credit based on accumulated state personal or sick leave. Proposed amended §25.302 updates several actuarial tables relating to the purchase of service credit that must be purchased based on the actuarial present value of the credit, such as service credit for unreported service or out-of-state service. Lastly, proposed amended §25.303 updates several actuarial tables relating to the purchase of compensation credit that statute must be purchased based on the actuarial present value of the compensation. Minor, conforming changes have also been made to the text of proposed amended §25.302 and §25.303 to incorporate these tables. Lastly, one additional clarifying change has been made to §25.303 that provides that the cost factor for purchasing compensation credit shall be applied to the difference between a participant's final

average salary before and after the purchase, not the additional compensation being purchased.

The proposed amended rules and updated tables are proposed to become effective on September 1, 2019 and will be used to calculate the cost of any relevant service or compensation credit purchases initiated beginning in the 2019-2020 school year and going forward.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amendments.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amendments will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed amendments will be to ensure that TRS administers the TRS retirement plan in accordance with the latest actuarial assumptions adopted by the Board. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amendments. To the extent the newly incorporated actuarial tables increase the cost of service credit purchases under the proposed amended rules, these increased costs result from TRS's obligation to comply with its governing statutes that require TRS to calculate the cost of the relevant types of service and compensation credit based on the actuarial present value of the additional service or compensation credit.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amendments. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amendments will be in effect the proposed amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed amendments, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amendments because the proposed new rule does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

SUBCHAPTER L. OTHER SPECIAL SERVICE CREDIT

34 TAC §25.162

STATUTORY AUTHORITY

The amendments are proposed under the authority of Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the board, and Government Code §823.403, which provides that an eligible member is entitled to receive service credit based on the member's accumulated sick and personal leave if the member pays to TRS at the time service credit is granted the actuarial present value of the additional standard retirement annuity benefits under the option selected by the member that would be attributable to the conversion of the unused state personal or sick leave into the service credit based on rates and tables recommended by the TRS actuary of record and adopted by the Board.

CROSS-REFERENCE TO STATUTE

The proposed amendments implement Chapter 823, Subchapter E, Texas Government Code, concerning establishment of equivalent membership service.

§25.162. *State Personal or Sick Leave Credit.*

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

(e) To compute these amounts, TRS will use the State Personal or Sick Leave Conversion Factor Tables furnished by the TRS actuary of record. Specifically, TRS will select the applicable conversion factor from the table based on the age of the member in full years and months at the effective date of retirement. To obtain the cost of the service credit, the conversion factor will be multiplied by the increase in the monthly standard retirement annuity resulting from the conversion of state personal or sick leave to an additional one year of service credit. The increase in the annuity will be determined using the standard retirement annuity without an adjustment for an optional service retirement annuity plan selected by the member because any optional plan selected by the member is required by Government Code §824.204(b) to be the actuarial equivalent of the member's standard retirement annuity.

Figure: 34 TAC §25.162(e)

[Figure: 34 TAC §25.162(e)]

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

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901633

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**SUBCHAPTER P. CALCULATION OF FEES
AND COSTS**

34 TAC §25.302, §25.303

The amendments are proposed under the authority of Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the board; Government Code §823.401, which provides that eligible members may establish equivalent member service credit based on certain types of out-of-state service by depositing with TRS the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit based on rates and tables recommended by the TRS actuary of record and adopted by the Board; Government Code §823.402, which provides that eligible members may establish equivalent membership service credit for certain developmental leave by depositing with TRS the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit based on rates and tables recommended by the TRS actuary of record and adopted by the Board; Government Code §823.404, which provides that an eligible member may establish equivalent membership service credit for work experience for which the member is entitled to a salary step under Education Code §21.403(b) if the member deposits with TRS, for each year of service, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the conversion of the work experience into service credit based on rates and tables recommended by the TRS actuary of record and adopted by the Board; Government Code §823.406, which provides that a member may establish membership service credit for service performed during a 90-day waiting period to become a member by depositing with TRS, for each month of service credit, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section, based on rates and tables recommended by the TRS actuary of record and adopted by the Board; and Government Code §825.403, which provides that to establish service or compensation credit for unreported service or compensation, a person must deposit with TRS the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service or compensation credit based on rates and tables recommended by the TRS actuary of record and adopted by the Board.

CROSS-REFERENCE TO STATUTE

The proposed amendments implement Chapter 823, Subchapter E, Texas Government Code, concerning establishment of equivalent membership service and Government Code §825.403, concerning the collection of member's contributions.

§25.302. *Calculation of Actuarial Costs of Service Credit.*

(a) (No change.)

(b) The factors for individuals whose membership was established before September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, are shown in the tables adopted as part of this subsection, which shall be used when the service credit cost is paid on or after September 1, 2019 [2012], or an installment agreement is entered into on or after September 1, 2019 [2012]. Within each set of tables, the number of years of service credit to be purchased will determine which specific table will be used. Each of the tables cross-references the member's age in rows with years of credited service (before purchase) in columns. The intersection of the participant's age and service is the cost per \$1,000 of salary. The cost factor for a participant with more years of service credit than shown on the table is the same as the factor shown for the highest number of years of service credit on the table for the participant. TRS will calculate the cost to purchase service credit under this section by dividing the participant's salary by 1000 and multiplying the resulting quotient by the appropriate cost factor obtained from the table. The tables set forth the cost, per \$1,000 of salary, to purchase from one year to fifteen years of service credit. The number of years of service credit available for purchase is determined by the laws and rules applicable to the type of service credit to be purchased. For the purpose of calculating the required amount for a member who is not grandfathered to use a three-year salary average under §51.12 of this title (relating to Applicability of Certain Laws in Effect before September 1, 2005), the term "salary" is defined as follows:

(1) For the upper region of the table (where the factors appear above the line), salary is the greater of the annual salary for the last year of credited service or the average of the member's highest years of compensation calculated on September 1 of the school year in which the cost of the service credit is established[; ~~with~~]. The fewer of five years of compensation or all of the member's years of compensation shall be [either two or three years of compensation] used for the average[; ~~depending on whether the member has only two years or has three or more years of service credit at the time of the calculation~~]; or

(2) For the lower region of the table (where the factors appear below the line), salary is the average of the member's highest ~~five~~ [three] years of compensation calculated on September 1 of the school year in which the cost of the service credit is established. A member's highest ~~five~~ [three] years of compensation shall be calculated as if the member were retiring at the time the service credit is purchased. The lower region of the table (where the factors appear below the line) reflects those age and service combinations where the purchase of service credit results in immediate eligibility of the member for unreduced retirement benefits.

Figure: 34 TAC §25.302(b)(2)
~~[Figure: 34 TAC §25.302(b)(2)]~~

(c) For the purpose of calculation of actuarial cost for service credit for a member described in subsection (b) of this section who is ~~not~~ grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a three-year [five-year] salary average shall be used instead of a five-year [three-year] salary average. Additionally, the cost shall be 103.5 [96] percent of the cost as calculated under subsection (b) of this section when a factor in the upper region of the table is used.

(d) For individuals whose membership was established on or after September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, the methodology described in subsection (b) of this section shall be used to determine cost of additional service credit, but TRS shall use the factors in the tables adopted as part of this subsection, which shall be used when the service credit cost is paid on or after September 1,

2019 [2012], or an installment agreement is entered into on or after September 1, 2019 [2012]. If the member is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section [except that a five-year salary average shall be used instead of a three-year salary average].

Figure: 34 TAC §25.302(d)

[Figure: 34 TAC §25.302(d)]

(e) If an individual established membership on or after September 1, 2007 and has five years of service credit on August 31, 2014 and maintains membership in TRS until the time of purchase, but is grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a three-year salary average shall be used instead of a five-year salary average. The cost of establishing additional service credit for a grandfathered member described in this subsection, shall be 1.035 [1.04] times the cost as calculated under subsection (d) of this section when a factor in the upper region of the table is used.

(f) (No change).

~~[(g) For the cost calculations described in subsections (b) and (d) of this section, when the cost is calculated for a purchase that is paid in full before September 1, 2012, or for a purchase for which an installment agreement is entered into before September 1, 2012, the factors in the tables adopted as part of this subsection shall be used.]~~

~~[Figure 1: 34 TAC §25.302(g)]~~

~~[Figure 2: 34 TAC §25.302(g)]~~

(g) ~~[(h) For [Effective September 1, 2014, for] members who do not have five years of service credit on August 31, 2014 or whose current membership began after August 31, 2014, the methodology described in subsections (b) and (c) of this section shall be used to determine the cost of additional service credit, but TRS shall use the factors in the tables adopted as a part of this subsection.~~

~~Figure: 34 TAC §25.302(g)~~

~~[Figure: 34 TAC §25.302(h)]~~

(h) ~~[(i) For the purpose of calculation of actuarial cost for service credit for a member described in subsection (g) [(h)] of this section who is not grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section [except that a five-year salary average shall be used instead of a three-year salary average].~~

(i) ~~[(j) If the individual did not have five years of service credit on August 31, 2014 or whose current membership began after August 31, 2014 but is grandfathered to use a three-year salary average, the term "salary" shall have the same meaning as in subsection (b) of this section except that a three-year salary average shall be used instead of a five-year salary average.~~ The cost of establishing additional service credit for a grandfathered member described in this subsection shall be 1.035 [1.04] times the cost as calculated under subsection (g) [(h)] of this section when a factor in the upper region of the table is used.

§25.303. *Calculation of Actuarial Cost for Purchase of Compensation Credit.*

(a) (No change).

(b) Each of the tables cross-references the member's age in rows with years of credited service in columns. The intersection of the participant's age and service is the cost factor that shall be applied in determining the cost to purchase [of the additional] compensation credit [as described in this subsection]. TRS will calculate the cost to purchase compensation credit under this section by dividing the [additional] difference between participant's final average salary before and after the purchase [compensation by three or five years, as determined by the standard annuity calculation applicable to the member,

and dividing that quotient] by 1,000 and multiplying the [resulting] quotient by the appropriate cost factor obtained from the table. The eligibility of additional compensation credit available for purchase is determined by the laws and rules applicable to the type of compensation sought to be credited.

(c) For individuals whose membership was established before September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, the methodology described in subsection (b) of this section shall be used to determine cost of additional compensation credit, but TRS shall use the factors in the tables adopted as part of this subsection.

Figure: 34 TAC §25.303(c)

[Figure: 34 TAC §25.303(e)]

(d) For individuals whose membership was established on or after September 1, 2007 and who have five years of service credit on August 31, 2014 and maintain membership in TRS until the time of purchase, the methodology described in subsection (b) of this section shall be used to determine cost of additional compensation credit, but TRS shall use the factors in the tables adopted as part of this subsection.

Figure: 34 TAC §25.303(d)

[Figure: 34 TAC §25.303(d)]

(e) For [Effective September 1, 2014, for] members who do not have five years of service credit on August 31, 2014 or whose current membership began after August 31, 2014, the methodology described in subsection (b) of this section shall be used to determine the cost of additional compensation credit, but TRS shall use the factors in the tables adopted as a part of this subsection.

Figure: 34 TAC §25.303(e)

[Figure: 34 TAC §25.303(e)]

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

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901634

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 542-6438



CHAPTER 29. BENEFITS

SUBCHAPTER A. RETIREMENT

34 TAC §29.11, §29.21

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 34 TAC §29.11 and §29.21 are not included in the print version of the Texas Register. The figure is available in the on-line version of the June 14, 2019, issue of the Texas Register.)

The Teacher Retirement System of Texas (TRS) proposes amendments to §29.11 relating to Actuarial Tables and §29.21 relating to Beneficiary Tables of Chapter 29, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code.

BACKGROUND AND PURPOSE

Each rule TRS proposes to amend currently incorporates one or more actuarial table used to calculate the retirement benefits of TRS retirees based on various retirement selections, such as electing for early-age retirement or a partial lump-sum option payment. The proposed amendments incorporate new actuarial tables into each rule that have been updated based on the TRS Board of Trustees (Board) most recently approved mortality assumptions and new investment return assumption. The new actuarial tables were prepared by the TRS actuary of record, Gabriel, Roeder, Smith & Company.

Proposed amended §29.11 updates several actuarial tables relating to early-age retirement reduction factors, reduction factors for service and disability retirement options, and reserve transfer factors. Proposed amended §29.21 updates the tables for unisex joint beneficiary life expectancy that are used when calculating life expectancy for the purposes of option beneficiary changes made under §824.1013, Government Code. Minor, conforming changes have also been made to the text of proposed amended §29.11 to incorporate the updated tables.

The proposed amended rules and updated tables are proposed to become effective on September 1, 2019 and will generally be used to calculate the benefits for all service or disability retirements or option beneficiary changes that will be effective in the 2019-2020 school year and going forward. If an update to one of the tables would have an adverse impact to the benefits of a retiree or member who is eligible for normal-age service retirement at the time of the proposed change becomes effective, the retiree or member's benefit will continue to be calculated under the tables as they existed prior to the update.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amendments.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amendments will be in effect, TRS has determined that the public benefit anticipated as a result of adopting the proposed amendments will be to ensure that TRS administers the TRS retirement plan in accordance with the latest actuarial assumptions adopted by the Board. TRS has also determined that there is no economic cost to entities or persons required to comply with the proposed amendments. To the extent the newly incorporated actuarial tables increase the reduction of a retiree's annuity payment proposed amended rules, these increased costs result from TRS's obligation to comply with its governing statutes that require TRS to reduce a member's retirement annuity to its actuarial equivalent based on the member's retirement selections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amendments. Therefore, no lo-

cal employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amendments will be in effect the proposed amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed amendments, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amendments because the proposed new rule does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the authority of Government Code §825.102 which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the board; Government Code §824.1013, which limits the monthly payments a new option beneficiary may receive after a beneficiary change under that section to the life expectancy of the beneficiary designated at retirement; Government Code §824.202, which provides the early-age retirement reduction factors and authorizes the Board to adopt tables that interpolate the application of each reduction factor by each month of age of retiree between two years of age; Government Code §824.204, which requires that an optional annuity payment be actuarially reduced from the standard annuity payment to its actuarially equivalent based on the service retirement option selected; Government Code §824.308, which requires that an optional annuity payment be actuarially reduced from the standard annuity payment to its actuarially equivalent based on the disability retirement option selected; and Government Code §825.309, which describes that if TRS transfers funds to a retired reserve account the amount transferred from the state contribution account must be an amount determined under actuarial tables adopted by the Board sufficient for the payments of benefits as they become due.

CROSS-REFERENCE TO STATUTE

The proposed amendments implement Chapter 824, Subchapter B (concerning Beneficiaries), Subchapter C (concerning Service Retirement Benefits), and Subchapter D (concerning Disability Retirement Benefits), Texas Government Code and

Chapter 825, Subchapter D (concerning Management of Assets), Texas Government Code.

§29.11. *Actuarial Tables.*

(a) (No change.)

(b) The Teacher Retirement System adopts the actuary's [June 1997] early age reduction factors [based on 8.0% interest, with modifications to the early age reduction factor table to reflect the amendment of Government Code §824.202 effective September 1, 2005, including the repeal of §824.202(e). These actuarial tables shall be effective beginning September 1, 1997, except for the early age reduction factor modifications, which shall be effective September 1, 2005]. The factor tables are as follows:

Figure: 34 TAC §29.11(b)

[Figure: 34 TAC §29.11(b)]

(c) The Teacher Retirement System adopts the actuary's [June 1997] factors for service retirement options [based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1997]. The factor tables are as follows:

Figure: 34 TAC §29.11(c)

[Figure: 34 TAC §29.11(c)]

(d) The Teacher Retirement System adopts the actuary's [June 1997] factors for disabled member retirement options [based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1997]. The factor tables are as follows:

Figure: 34 TAC §29.11(d)

[Figure: 34 TAC §29.11(d)]

(e) The Teacher Retirement System adopts the actuary's reserve transfer factors [effective beginning September 1, 1991, based on 8.0% interest]. The reserve transfer factor tables are as follows:

Figure: 34 TAC §29.11(e)

[Figure: 34 TAC §29.11(e)]

(f) The board of trustees may change the tables or adopt new tables from time to time by amending this section; provided, however, that any such change does not result in any retiree or member eligible for service retirement with an unreduced annuity as of the date of the change receiving a smaller benefit than the benefit computed immediately before the change. If such a change would result in a smaller benefit, then TRS will use the tables in effect immediately prior to the change to calculate the benefits for any retiree or member eligible for service retirement with an unreduced annuity as of the date of the change.

§29.21. *Beneficiary Tables.*

Tables for Unisex Joint Beneficiary Life furnished by the TRS actuary of record (actuary) will be used in calculating a life expectancy under §824.1013 of the Government Code. A fraction of a year shall be converted to whole months with any partial month being rounded upward to a full month. Life expectancy shall be determined as of the date of the retirement in question and the age of the original beneficiary at that time. The Teacher Retirement System of Texas adopts the actuary's [August 1997] Tables for Unisex Joint Beneficiary Life.

Figure: 34 TAC §29.21

[Figure: 34 TAC §29.21]

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

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901632

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 542-6438

◆ ◆ ◆
SUBCHAPTER F. PARTIAL LUMP-SUM
PAYMENT

34 TAC §29.71

The Teacher Retirement System of Texas (TRS) proposes amendments to §29.71, relating to Tables, Subchapter F, in Title 34, Part 3, of the Texas Administrative Code.

BACKGROUND AND PURPOSE

Each rule TRS proposes to amend currently incorporates one or more actuarial table used to calculate the retirement benefits of TRS retirees based on various retirement selections, such as electing for early-age retirement or a partial lump-sum option payment. The proposed amendments incorporate new actuarial tables into each rule that have been updated based on the TRS Board of Trustees (Board) most recently approved mortality assumptions and new investment return assumption. The new actuarial tables were prepared by the TRS actuary of record, Gabriel, Roeder, Smith & Company.

Proposed amended §29.71 updates the actuarial table relating to the reduction factors to be applied to the annuity payments of retirees that elect to receive a partial lump-sum payment at the time of retirement.

The proposed amended rule and updated tables are proposed to become effective on September 1, 2019, and will generally be used to calculate the benefits for all service or disability retirements or option beneficiary changes that will be effective in the 2019-2020 school year and going forward. If an update to one of the tables would have an adverse impact to the benefits of a retiree or member who is eligible for normal-age service retirement at the time of the proposed change becomes effective, the retiree or member's benefit will continue to be calculated under the tables as they existed prior to the update.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amendments.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amendments will be in effect, TRS has determined that the public benefit anticipated as a result of adopting the proposed amendments will be to ensure that TRS administers the TRS retirement plan in accordance with the latest actuarial assumptions adopted by the Board. TRS has also determined that there is no economic cost to entities or persons required to comply with the proposed amendments. To the extent the newly incorporated actuarial tables increase the reduction of a retiree's annuity payment proposed amended rules, these increased costs result from TRS's obligation to comply with its governing statutes that require TRS to reduce a member's retirement annuity to its actuarial equivalent based on the member's retirement selections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amendments. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amendments will be in effect the proposed amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed amendments, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amendments because the proposed new rule does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the authority of Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the board, and Government Code §824.2045, which requires the service retirement annuity selected by a retiree to be actuarially reduced to reflect the lump-sum option selected by the member and shall be actuarially equivalent to a standard or optional service retirement annuity, as applicable, reduced for early age without the partial lump-sum distribution.

CROSS-REFERENCE TO STATUTE

The proposed amendments implement Chapter 825, Subchapter C (concerning Service Retirement Benefits), Texas Government Code.

§29.71. Tables.

(a) Any eligible retiree who selects a partial lump-sum option will receive an actuarially reduced annuity to reflect the selection of the

lump-sum option. TRS will use Factor Tables for Partial Lump-Sum Option Payments furnished by the TRS actuary of record.

Figure: 34 TAC §29.71(a)

[Figure: 34 TAC §29.71(a)]

(b) The member's age in whole years will be used from column one and the percentage of standard annuity factor from column three, four, or five, depending on the number of months of lump-sum selected, will be used to determine the percentage of standard annuity that will be paid to a person who elects to participate in the partial lump-sum option plan.

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

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901631

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 542-6438



CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

The Teacher Retirement System of Texas (TRS) proposes amendments to rules §41.1, relating to Initial Enrollment Periods for the Health Benefit Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care); §41.2, relating to Additional Enrollment Opportunities; §41.3, relating to Retirees Advisory Committee; §41.4, relating to Employer Health Benefit Surcharge; §41.7, relating to Effective Date of Coverage; §41.8, relating to Eligible Bidders; §41.9, relating to Bid Procedure; §41.11, relating to Years of Service Credit Used to Determine Premiums; §41.15, relating to Requirements to Bid on Insurance for School District Employees and Retirees Under Chapter 1576 of the Insurance Code; §41.31, relating to Eligible Bidders; §41.32, relating to Bid Procedure; §41.34, relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program; §41.39, relating to Coverage for Individuals Changing Employers; §41.41, relating to Premium Payments; and §41.50, relating to Appeals Relating to Claims or Other Benefits of Chapter 41, Subchapter A, Subchapter B and Subchapter C, in Title 34, Part 3, of the Texas Administrative Code.

BACKGROUND AND PURPOSE

Subchapter A, Retiree Health Care Benefits (TRS-CARE): This subchapter contains 14 rules addressing the health coverage that can be offered pursuant to Chapter 1575 of the Insurance Code. Changes are proposed for eight rules in this subchapter: §§41.1, 41.2, 41.3, 41.4, 41.7, 41.8, 41.9, and 41.11.

TRS-Care Program Rule 41.1 Initial Enrollment Periods for the Health Benefit Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care). In addition to non-substantive proposed amendments to streamline the wording of this rule, amendments are also being proposed in subsection (e) to eliminate specific references to initial enrollment opportunities for new spouses and new dependent children. Those have been replaced by references to broader enrollment opportunities

under Rule 41.2 and under applicable law, which themselves include initial enrollment opportunities for new spouses and new dependent children. Therefore, these proposed amendments in subsection (e) do not make any substantive changes to the initial enrollment periods available to potential enrollees.

TRS-Care Program Rule 41.2 Additional Enrollment Opportunities. Subsection (a) of this rule expired on December 31, 2017, as evidenced by subsection (a)(9). Accordingly, this subsection is deleted, along with the re-lettering of the remainder of the subsections of this rule. In addition, subsection (b)(3) is deleted because it is no longer needed.

TRS-Care Program Rule 41.3 Retirees Advisory Committee. Along with the correction of a typographical reference to the "Committees" in subsection (g), the proposed amendment concerning subsection (b) more closely aligns its language with the language found in Section 1.7(t) of the TRS Board Bylaws.

TRS-Care Program Rule 41.4 Employer Health Benefit Surcharge. With the passage of time, the introductory phrase in subsection (c), along with existing subsections (b), (j) and (k), are no longer needed. All of the other amendments proposed in this rule simply re-letter references to the remaining subsections of this rule.

TRS-Care Program Rule 41.7 Effective Date of Coverage. The proposed amendments in subsection (g) and subsection (h) are responsive to the above noted re-lettering of the remaining subsections of Rule 41.2. Further, a new subsection (n) has been added as a means of providing notice to enrollees in a Medicare plan under TRS-Care that their effective date of coverage is determined by the federal laws, regulations, policies and procedures that control the Medicare program.

TRS-Care Program Rules 41.8 Eligible Bidders and Rule 41.9 Bid Procedure. These rules deal with bidding issues related to the TRS-Care Program. The proposed revisions to these rules, as well as the similar rules for the other two programs addressed under Chapter 41, have two objectives in mind: (1) where appropriate, to create greater consistency between and among these rules, given that all of them address bidding issues; and (2) to eliminate specific bidding terms. Specific bidding terms are now included in the minimum qualification standards outlined in each solicitation, when appropriate; accordingly, the proposed revisions to the rules for each program include more general and more flexible requirements that each bidder "must comply with the minimum qualification standards contained in the applicable solicitation from TRS" and each bid must be "submitted in compliance with the bid requirements provided by TRS."

TRS-Care Program Rule 41.11 Years of Service Credit Used to Determine Premiums. Subsection (a) provides that TRS may use years of service credit to determine applicable premium rates. The proposed amendments add an introductory phrase to subsections (b) and (c) in order to clarify that subsections (b) and (c), with their mandatory "will use the retiree's years of service credit" language, are subject first and foremost to an election by TRS under subsection (a) to use such years of service credit in determining premiums.

Subchapter B, Long-Term Care, Disability and Life Insurance Rule 41.15 Requirements to Bid on Insurance for School District Employees and Retirees Under Chapter 1576 of the Insurance Code. This subchapter contains six rules addressing the long-term care coverage that can be offered pursuant to Chapter 1576 of the Insurance Code. Changes are proposed for one rule in this subchapter, §41.15. The proposed amendments to

this rule provide consistency with the changes being proposed to the other rules that address bidding for contracts (*i.e.*, Rules 41.8, 41.9, 41.31, and 41.32); also, existing subsections (c) and (d) of Rule 41.15 are being deleted because the possible offering of permanent life insurance and disability insurance are not a part of the Long-Term Care Program and, therefore, should not be included in this rule.

Subchapter C, Texas School Employees Group Health (TRS-ActiveCare). This subchapter contains sixteen rules addressing the administration and operation of the TRS-ActiveCare Program. Changes are proposed for six rules in the subchapter: §§41.31, 41.32, 41.34, 41.39, 41.41, and 41.50.

TRS-ActiveCare Program Rule 41.31 Eligible Bidders and Rule 41.32 Bid Procedure. These rules relate to bidding issues associated with the TRS-ActiveCare Program. The proposed revisions to these rules, as well as the similar rules for the other two programs addressed under Chapter 41, have two objectives in mind: (1) where appropriate, to create greater consistency between and among these rules, given that all of them address bidding issues; and (2) to eliminate specific bidding terms. Specific bidding terms are now included in the minimum qualification standards outlined in each solicitation, when appropriate; accordingly, the proposed revisions include for each program more general and more flexible requirements that each bidder "must comply with the minimum qualification standards contained in the applicable solicitation from TRS" and each bid must be "submitted in compliance with the bid requirements provided by TRS."

TRS-ActiveCare Program Rule 41.34 Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program. As marked in subsections (1), (2), (3), (5) and (6), the proposed substitution of the word "title" for "chapter" align these references with similar such references found in other rules under Chapter 41. With the passage of time, the introductory phrase in subsection (8), along with existing subsection (9), are no longer needed. These above-noted proposed amendments make no substantive changes to this rule.

TRS-ActiveCare Program Rule 41.39 Coverage for Individuals Changing Employers. The only proposed amendment to this rule is found in subsection (d). Subsection (d) provides that an eligible employee who has previously waived coverage may enroll during any subsequent open enrollment period. However, a change in employment that takes place during the same plan year in which the employee waived coverage, but outside of an open-enrollment period, will not allow the employee to enroll in TRS-ActiveCare. Yet, Rule 41.36(b) provides that if an eligible part-time employee waives coverage during an enrollment opportunity and later, during that same plan year, becomes an eligible full-time employee, then that employee has a 31-day enrollment opportunity to enter into TRS-ActiveCare; this change in status to a full-time employee could take place when the employee changes employment during the same plan year in which the employee previously waived coverage. This proposed amendment provides notice to enrollees of this exception to the general prohibition found in subsection (d) of Rule 41.39.

TRS-ActiveCare Program Rule 41.41 Premium Payments. With the passage of time, existing subsection (a), along with the introductory phrase in subsection (b), are no longer needed. All of the other amendments proposed in this rule simply re-letter references to the remaining subsections of this rule.

TRS-ActiveCare Program Rule 41.50 Appeals Relating to Claims or Other Benefits. With the passage of time, the phrase in subsection (a) that references "September 1, 2011," along with existing subsection (b), are no longer needed.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rules will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed amended rules will be to provide notice and guidance on TRS membership eligibility. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amended rules. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rules. Therefore, no local employment impact statement is required under Government Code §2001.022 and §2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rules will be in effect the proposed amended rules will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed amended rules, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rules because the proposed amended rules do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §§41.1 - 41.4, 41.7 - 41.9, 41.11

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Insurance Code §1575.051 and 1575.052(a), relating to the adoption of rules to implement TRS-Care; Texas Insurance Code §1576.006, relating to the adoption of rules for group long-term care insurance for public school employees; and Texas Insurance Code §1579.051 and §1579.052 (a), (b) and (e), relating to the adoption of rules for TRS-ActiveCare.

CROSS-REFERENCE TO STATUTE

The proposed amended rules implement the Texas Public School Retired Employees Group Benefits Act (Chapter 1575 of the Texas Insurance Code); Chapter 1576 of the Texas Insurance Code, relating to group long-term care insurance for public school employees; and the Texas School Employees Group Health Coverage Act (Chapter 1579 of the Texas Insurance Code).

§41.1. Initial Enrollment Periods for the Health Benefit Program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care).

(a) The initial enrollment period in ~~the health benefits program under the Texas Public School Retired Employees Group Benefits Act~~ TRS-Care [(TRS-Care)] for eligible ~~Teacher Retirement System of Texas~~ TRS [(TRS)] retirees who take a service retirement and who are eligible to enroll in TRS-Care at the time of retirement expires at the end of the later of:

(1) the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after their effective retirement date; or

(2) the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, following the last day of the month in which their election to retire is received by TRS.

(b) The initial enrollment period in TRS-Care for eligible TRS disability retirees expires at the end of the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after the date that the disability retirement is approved by the TRS Medical Board.

(c) The initial enrollment period in TRS-Care for an eligible surviving spouse of a deceased retiree and for an eligible surviving dependent child of a deceased retiree expires on the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after the retiree died.

(d) The initial enrollment period in TRS-Care for an eligible surviving spouse of a deceased active member and for an eligible surviving dependent child of a deceased active member expires on the last day of the month that is 3 consecutive calendar months, but in no event less than 90 days, after the active member died.

(e) Notwithstanding the other provisions of this section, a participant shall be entitled to enroll in TRS-Care:

(1) under the additional enrollment opportunities found in Rule 41.2 of this title [A retiree may enroll a new spouse within 31 days of the date on which the retiree marries]; and

(2) under applicable law, including [A retiree or surviving spouse may enroll a child who becomes a dependent as defined by §

1575.003, Insurance Code, within 31 days after the date on which the child becomes a dependent eligible for coverage under TRS-Care; and]

[(3)] [A participant shall be entitled to] all applicable COBRA rights under the Federal Public Health Service Act.

(f) If a retiree fails to enroll a newly eligible spouse or dependent child or if a surviving spouse fails to enroll a newly eligible dependent child within the time periods set out in subsection (e) of this section, the retiree or surviving spouse will not be able to enroll the spouse or dependent child in TRS-Care until a subsequent enrollment period.

§41.2. Additional Enrollment Opportunities.

[(a)] Age 65 Additional Enrollment Opportunity. "Eligible participants," as defined in paragraph (1) of this subsection, have an additional enrollment opportunity in TRS-Care as described in this subsection when they become 65 years old (the "Age 65 Additional Enrollment Opportunity").]

[(1)] For purposes of this subsection, the term "eligible participants" means:]

[(A)] all TRS retirees who are enrolled in TRS-Care;]

[(B)] dependents, as defined in Insurance Code, §1575.003, who are enrolled in TRS-Care and who are eligible to enroll in TRS-Care in their own right as a TRS service or disability retiree; and]

[(C)] surviving spouses, as defined in Insurance Code, §1575.003 who are enrolled in TRS-Care.]

[(2)] Those eligible participants who are enrolled in TRS-Care on August 31, 2004, and who become 65 years old after that date have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.]

[(3)] Those eligible participants who enroll in TRS-Care after August 31, 2004, and who become 65 years old after the date of their enrollment have the Age 65 Additional Enrollment Opportunity on the date that they become 65 years old.]

[(4)] The Age 65 Additional Enrollment Opportunity for those eligible participants who enroll in TRS-Care after August 31, 2004, and who are 65 years old or older when they enroll in TRS-Care runs concurrently with the initial enrollment period as set out in §41.1 of this title (relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)).]

[(5)] An eligible participant who is not enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll:]

[(A)] in any plan, for which he or she is eligible under law, located in the next-higher TRS-Care coverage tier (level of coverage), as determined by TRS-Care; and]

[(B)] add dependent coverage in any plan, for which the dependent is eligible under law, located in that same coverage tier (level of coverage).]

[(6)] An eligible participant who is enrolled in Medicare Part A at the time of his or her Age 65 Additional Enrollment Opportunity can enroll:]

[(A)] in any plan, for which he or she is eligible under law, located in any TRS-Care coverage tier (level of coverage); and]

[(B)] add dependent coverage in any plan, for which the dependent is eligible under law, located in that same coverage tier (level of coverage).]

[(7)] An eligible participant, at the time of his or her Age 65 Additional Enrollment Opportunity, can:]

[(A)] choose to remain in the same TRS-Care coverage tier (level of coverage);]

[(B)] enroll in any plan, for which he or she is eligible under law, located in that same TRS-Care coverage tier (level of coverage); and]

[(C)] add dependent coverage in any plan, for which the dependent is eligible under law, in that same coverage tier (level of coverage).]

[(8)] The period to exercise the Age 65 Additional Enrollment Opportunity for eligible participants described in paragraph (2) or (3) of this subsection expires at the end of the later of:]

[(A)] the 31st day following the last day of the month in which the eligible participant becomes 65 years old; or]

[(B)] the 31st day after the date printed on the notice of the additional enrollment opportunity sent to the eligible participant at the eligible participant's last-known address, as shown in the TRS-Care records.]

[(9)] This subsection expires December 31, 2017.]

(a) [(b)] Age 65 Enrollment Opportunity.

(1) Upon reaching 65 years of age, a retiree or surviving spouse is eligible to be enrolled in TRS-Care under terms, conditions and limitations established by the trustee unless expelled from the program under provisions of Chapter 1575, Insurance Code (the "Age 65 Enrollment Opportunity"). The retiree or surviving spouse may select any coverage provided under TRS-Care for which the individual or a dependent is otherwise eligible.

(2) The enrollment period for an individual who becomes eligible for coverage under paragraph (1) of this subsection shall begin on the date the individual reaches 65 years of age and ends 31 calendar days from the end of the month in which the individual reaches 65 years of age. To make an effective election, a completed TRS-Care application must be received by TRS no later than the end of this enrollment period.

[(3)] This subsection becomes effective January 1, 2018.]

(b) [(e)] Special Enrollment Opportunity under the Health Insurance Portability and Accountability Act (HIPAA).

(1) An individual who becomes eligible for coverage under the special enrollment provisions of HIPAA may elect to enroll in TRS-Care.

(2) The enrollment period for an individual who becomes eligible for coverage due to a special enrollment event under paragraph (1) of this subsection shall be the 31 calendar days immediately after the date of the special enrollment event. To make an effective election, a completed TRS-Care application must be received by TRS within this 31-day period.

(c) [(d)] Enrollment Opportunity Established by TRS. An eligible individual may enroll in TRS-Care during an enrollment period established by TRS.

(d) [(e)] This section does not affect the right of a TRS service retiree or surviving spouse enrolled in a TRS-Care plan to drop coverage or drop dependents at any time.

§41.3. *Retirees Advisory Committee.*

(a) The task and purpose of the Retirees Advisory Committee (Committee) is to:

(1) hold public hearings on group insurance benefits;

(2) recommend to the Board of Trustees of TRS (Board) minimum standards and features of the plan or plans that it considers appropriate; and

(3) recommend to the Board desirable changes in rules and legislation affecting the program.

(b) The Board will appoint members and officers [designate the chairman] of the Committee.

(c) A majority of the Committee will constitute a quorum.

(d) The executive director of TRS will provide a secretary to the Committee to prepare minutes of the Committee's meetings. The executive director shall be custodian of the records of the Committee.

(e) The executive director may designate the time, dates, and place of the meetings of the Committee. The Committee shall meet at least twice per year, and at the call of the Board.

(f) In the event of an emergency, a majority of the Committee's members may call a meeting by notifying the executive director in writing at least 10 days before the meeting.

(g) The executive director shall file all meeting notices for the Committee [Committees] as required by the Texas Open Meetings law.

(h) The Committee will report to the Benefits Committee of the Board or directly to the Board as appropriate.

§41.4. *Employer Health Benefit Surcharge.*

(a) When used in this section, the term "employer" has the meaning given in §821.001(7), Government Code.

~~[(b) For school years prior to the 2013-2014 school year, for each report month a retiree is enrolled in the health benefits program (TRS-Care) provided pursuant to the Texas Public School Retired Employees Group Benefits Act and working for an employer or a third party entity as defined in §824.601, Government Code, in a position eligible for membership in TRS, the employer that reports the retiree on the Employment of Retired Members Report shall pay the monthly surcharge described in this section to the Retired School Employees Group Insurance Fund (the Fund).]~~

(b) ~~[(e) Beginning September 1, 2013, for]~~ For each report month a retiree is enrolled in TRS-Care and working for an employer for more than the equivalent of four clock hours for each work day in that calendar month, the employer that reports the employment of the retiree on the Employment of Retired Members Report to TRS shall pay monthly to the Retired School Employees Group Insurance Fund (the Fund) ~~[the Fund]~~ a surcharge established by the Board of Trustees of TRS.

(c) ~~[(d)]~~ The criteria used to determine if the retiree is working more than the equivalent of four clock hours for each work day in that calendar month are the same as the criteria for determining one-half time employment under §31.14 of this title (relating to One-half Time Employment).

(d) ~~[(e)]~~ The surcharge is also owed by the employer on any retiree who is enrolled in TRS-Care, is working for a third party entity but is working for more than the equivalent of four clock hours for each work day in that calendar month and who is considered an employee of that employer under §824.601(d) of the Government Code.

(e) ~~[(f)]~~ The surcharge under this section is not owed:

(1) by an employer for any retiree who retired from TRS before September 1, 2005; or

(2) by an employer for a retiree reported as working under the exception for Substitute Service as provided in §31.13 of this title (relating to Substitute Service) unless that retiree combines Substitute Service under §31.13 of this title with other employment with the same or another employer or third party entity in the same calendar month. For each calendar month that the retiree combines substitute service and other employment as described so that the work exceeds one-half time as described in §31.14(e) of this title, the surcharge is owed by each employer as provided in this section.

~~(f) [(g)]~~ A retiree who is enrolled in TRS-Care, is working for an employer or third party entity for more than the equivalent of four clock hours for each work day in that calendar month, and is reported on the Employment of Retired Members Report to TRS shall inform the employer of all employers of the retiree and all employers of any other retiree enrolled under the same account identification number. An employer who reports to TRS the employment of a retiree who is enrolled in TRS-Care and is working more than the equivalent of four clock hours for each work day in that calendar month shall inform TRS as soon as possible in writing of the name, address, and telephone number of any other employer that employs the retiree or any other retiree who is also enrolled under the same account identification number.

~~(g) [(h)]~~ If more than one employer reports the employment of a retiree who is enrolled in TRS-Care to TRS during any part of a month, the surcharge under this section required to be paid into the Fund by each reporting employer for that month is the total amount of the surcharge due that month divided by the number of reporting employers. The pro rata share owed by each employer is not based on the number of hours respectively worked by the retiree for each employer, nor is it based on the number of days respectively worked during the month by the retiree for each employer.

~~(h) [(i)]~~ If a retiree who is enrolled in TRS-Care is employed concurrently by one or more employers in more than one position, the surcharge is owed if the combined employment is for more than the equivalent of four clock hours for each work day in that calendar month. If the employment is with more than one employer, the surcharge will be paid according to subsection ~~(g) [(h)]~~ of this section by each employer.

~~(i) [(j)]~~ For school years prior to the 2013-2014 school year, if a retiree who is enrolled in TRS-Care is employed concurrently in more than one position and one of the positions is eligible for TRS membership and one is not, the surcharge is owed on the combined employment. If the employment is with more than one employer, the surcharge will be paid according to subsection (h) of this section by each employer.]

~~(k) [(l)]~~ For school years prior to the 2013-2014 school year, if a retiree who is enrolled in TRS-Care is employed in a position eligible for TRS membership, the surcharge will be paid according to subsection (h) of this section by each employer on all subsequent employment, whether eligible for membership or not, with a TRS-covered employer for the same school year.]

~~(l) [(m)]~~ The employer shall maintain the confidentiality of any information provided to the employer under this section and shall use the information only as needed to carry out the purposes stated in this section and related applicable rules or statutes.

§41.7. *Effective Date of Coverage.*

(a) Except as allowed by subsection (c) of this section, for TRS members who take a service or disability retirement and enroll in coverage during their initial enrollment period as described in §41.1 of this

title (relating to Initial Enrollment Periods for the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act (TRS-Care)), the effective date of coverage is:

(1) the first day of the month following the effective date of retirement if the application for coverage is received by TRS-Care on or before the effective retirement date; or

(2) the first day of the month following the receipt of the application for coverage by TRS-Care if the application is received after the effective retirement date but within the initial enrollment period.

(b) A TRS member who takes a service or disability retirement and enrolls in coverage during his or her initial enrollment period may, at any time during his or her initial enrollment period, make changes to his or her coverage elections. The effective date of coverage for the new elections is the first day of the month following receipt by TRS-Care of the application requesting the change in coverage.

(c) Regardless of the date a TRS member submits his application for retirement, if a TRS member enrolls in coverage during his initial enrollment period as described in §41.1 of this title, the TRS member may defer the effective date of coverage described in subsection (a) of this section for himself and his eligible dependents to the first day of any of the three (3) months immediately following the month after the effective date of retirement. This deferment period runs concurrent with, and does not extend, the enrollment period as described in §41.1 of this title. In no event may a TRS member defer the effective date of TRS-Care coverage to a date prior to the date upon which TRS-Care receives the application for coverage from the TRS member.

(d) Surviving spouses and surviving dependent child(ren) who are currently enrolled with the retiree at the time of the retiree's death will continue to be enrolled in the same coverage plan, subject to the applicable eligibility requirements of that coverage plan.

(e) If the surviving spouse or the surviving dependent child was not enrolled in TRS-Care immediately preceding his or her becoming eligible for coverage, the effective date of coverage will be, at the election of the surviving spouse or the surviving dependent child, either the first day of the month following:

(1) TRS-Care's receipt of an application during the initial enrollment period as described in §41.1 of this title; or

(2) the month of the death of the deceased TRS service or disability retiree or deceased active TRS member, provided TRS-Care receives an application during the initial enrollment period as described in §41.1 of this title.

(f) The effective date of coverage for an eligible dependent who is enrolled under a retiree's or surviving spouse's TRS-Care coverage during the initial enrollment period is the same date as the retiree or surviving spouse's effective date of coverage unless the dependent is enrolled after the retiree's effective retirement date and after the retiree has enrolled but within the initial enrollment period, in which case the dependent's effective date of coverage will be the first day of the month following TRS-Care's receipt of the application to enroll the dependent.

(g) The effective date of coverage for an eligible individual who is enrolled in TRS-Care as a result of a special enrollment event, as described in §41.2(b) [§41.2(e)] of this title (concerning Additional Enrollment Opportunities), is the date specified under the provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)).

(h) The effective date of coverage for an eligible individual who is enrolled in TRS-Care as a result of the Age 65 enrollment opportunity, as described in §41.2(a) [§41.2(b)] of this title is:

(1) the first day of the month following the month of the retiree's or surviving spouse's 65th birthday if the application for coverage is received by TRS-Care before or during the month of the retiree's or surviving spouse's 65th birthday; or

(2) the first day of the month following the receipt of the application by TRS-Care if the application for coverage is received after the month of the retiree's or surviving spouse's 65th birthday but within the enrollment period.

(i) Except as provided in subsections (k), (l), and (m) of this section, the effective date of changes in coverage due to the acquisition of Medicare Part A and/or Medicare Part B is the first of the month following the date of TRS-Care's receipt of proof, satisfactory to TRS-Care, of the participant's or dependent's Medicare Part A and/or Medicare Part B coverage.

(j) A retiree, surviving spouse, or surviving dependent child may cancel any coverage by submitting the appropriate notice of cancellation form to TRS-Care. Cancellations will be effective on the later of:

(1) the first day of the month following TRS-Care's receipt of the completed notice of cancellation form; or

(2) the date requested by the retiree, surviving spouse, or surviving dependent child on the completed notice of cancellation form received by TRS-Care.

(k) Where a participant has Medicare Part A coverage and TRS-Care has been paying primary to Medicare on Medicare Part A claims, TRS-Care may seek the recovery of funds and may make the effective date of the correct coverage retroactive to the first day of the earliest month for which recovery of such overpaid funds is possible under Medicare rules.

(l) Where a participant has Medicare Part A coverage and TRS-Care has been paying primary to Medicare on Medicare Part A claims, TRS-Care may make the effective date of the correct coverage retroactive to when the participant was first enrolled in both Medicare and TRS-Care to a maximum retroactive period of twelve months, including the month in which proof, satisfactory to TRS-Care, of Medicare Part A coverage is received by TRS-Care, and based thereon, TRS-Care may refund or credit the amount due to the participant.

(m) Upon TRS-Care's discovery that a participant does not have Medicare Part A coverage, in contrast to TRS-Care records indicating the participant has Medicare Part A coverage, TRS-Care will contact the participant and advise the participant that the cost of coverage and the coverage will be adjusted prospectively effective the first day of the next month unless proof, satisfactory to TRS-Care, of Medicare Part A coverage is received by TRS-Care prior to that date. Claims will be paid based upon the coverage in effect at the time the services were provided. Any claims already paid as if Medicare Part A were in effect will not be adjusted.

(n) Notwithstanding any other provision of this section to the contrary, the effective date of coverage of individuals who enroll in a Medicare plan associated with TRS-Care is subject to the federal laws, regulations, policies and procedures that control the Medicare program.

§41.8. *Eligible Bidders.*

(a) TRS-Care may include separate contracts for:

(1) [a] health benefit plans [~~plan~~];

(2) prescription drug plans;

(3) [~~2~~ a] utilization review services; [~~service~~; and]

(4) administrative services; and

(5) ancillary services [to provide other ancillary benefits].

(b) To be eligible to bid on any of the contracts in subsection (a) of this section, a bidder must comply with the minimum qualification standards contained in the applicable solicitation from TRS. [~~currently be servicing at least twice as many persons as will be covered under TRS-Care.~~]

[(c) Bidders who desire to bid on the administrative services only of a TRS benefits program that includes group health benefits are not covered by subsection (d) of this section.]

[(d) Bidders who wish to bid on services or products available to the entire state or to a region of the state shall provide information for each area, consisting of a county and all adjacent counties, on the number and types of qualified providers willing to participate in coverage or plan for which the bid is made.]

[(e) In determining the quality of the bids, the Board of Trustees of the Teacher Retirement System of Texas or its designee may consider such factors and criteria as they deem relevant and appropriate under the circumstances.]

§41.9. Bid Procedure.

(a) All bids for contracts under TRS-Care must be submitted in compliance with the bid requirements [and all applicable questions answered on the bid specification forms adopted and] provided by TRS [the Teacher Retirement System of Texas (TRS)].

[(b) All bids must be submitted in duplicate in separate sealed envelopes to the Director of TRS-Care, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698.]

[(c) All bids must be received no later than the date and time set by TRS on the bid specification forms.]

(b) [(d)] The bid opening shall [will] take place at a date and time set by TRS [in the TRS building at 1000 Red River Street, Austin, Texas.]

(c) In determining the quality of the bids, TRS may consider such factors and criteria as it deems relevant and appropriate under the circumstances.

(d) TRS shall not provide compensation to bidders for any expenses incurred by the bidder for bids preparation or for any demonstrations that may be made. Bidders submit bids at their own risk and expense.

§41.11. Years of Service Credit Used to Determine Premiums.

(a) In addition to other criteria that TRS may use to determine premiums, pursuant to section 1575.212, Insurance Code, TRS may use years of service credit to determine applicable premium rates.

(b) If TRS uses years of service credit to determine applicable premium rates, then to [Fo] determine the applicable premium for a retiree, regardless of the retiree's effective date of retirement, TRS will use the retiree's years of service credit to which the retiree is entitled under the Chapter 823, Government Code, at the time of the TRS retirement.

(c) If TRS uses years of service credit to determine applicable premium rates, then to [Fo] determine the applicable premium for surviving spouses and divorced spouses who elect COBRA coverage, TRS will use the retiree's years of service credit as determined by subsection (b) of this section.

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

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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 542-6438



SUBCHAPTER B. LONG-TERM CARE, DISABILITY AND LIFE INSURANCE

34 TAC §41.15

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Insurance Code §1575.051 and 1575.052(a), relating to the adoption of rules to implement TRS-Care; Texas Insurance Code §1576.006, relating to the adoption of rules for group long-term care insurance for public school employees; and Texas Insurance Code §1579.051 and §1579.052 (a), (b) and (e), relating to the adoption of rules for TRS-ActiveCare.

CROSS-REFERENCE TO STATUTE

The proposed amended rules implement the Texas Public School Retired Employees Group Benefits Act (Chapter 1575 of the Texas Insurance Code); Chapter 1576 of the Texas Insurance Code, relating to group long-term care insurance for public school employees; and the Texas School Employees Group Health Coverage Act (Chapter 1579 of the Texas Insurance Code).

§41.15. *Requirements to Bid on Group Long-Term Care Insurance [for School District Employees and Retirees] Under Chapter 1576 of the Insurance Code.*

(a) All contractors contracting and providing coverage under Chapter 1576, Insurance Code, must:

- (1) administer enrollment;
- (2) adjudicate all claims related to the coverage, except for eligibility of participants under the statute, which remains the responsibility of TRS as trustee;
- (3) coordinate services under the insurance coverages provided under Chapter 1576, Insurance Code; and
- (4) account for any premiums collected and disbursed under the coverages.

(b) To be eligible to bid on providing group long-term care insurance, a carrier must[=]

[(1)] comply with the minimum qualification standards contained in the applicable solicitation from TRS. [have had during the preceding calendar year at least \$10 million of long-term care premium income;]

[(2) currently have capital and surplus of at least \$500 million; and]

[(3) currently have at least three ratings within the top four rating categories as defined by the major insurance industry rating agencies. If a carrier is not rated, it may satisfy this requirement by showing that the carrier has twice the minimum financial requirements as stated in paragraphs (1) and (2) of this subsection.]

(c) All bids to provide group long-term care insurance must be submitted in compliance with the bid requirements provided by TRS.

(d) The bid opening shall take place at a date and time set by TRS.

(e) In determining the quality of the bids, TRS may consider such factors and criteria as it deems relevant and appropriate under the circumstances.

(f) TRS shall not provide compensation to bidders for any expenses incurred by the bidder for bids preparation or for any demonstrations that may be made. Bidders submit bids at their own risk and expense.

~~[(e) To be eligible to bid on providing optional permanent life insurance a carrier must:]~~

~~[(1) have had at least \$200 million of individual life premium income during the last calendar year;]~~

~~[(2) currently have capital and surplus of at least \$500 million; and]~~

~~[(3) currently have at least three ratings within the top four rating categories as defined by the major insurance industry rating agencies. If a carrier is not rated, it may satisfy this requirement by showing that the carrier has twice the minimum financial requirements as stated in paragraphs (1) and (2) of this subsection.]~~

~~[(d) To be eligible to bid on providing disability insurance a carrier must:]~~

~~[(1) have had during the preceding calendar year at least \$50 million of short-term and long-term disability combined premium income;]~~

~~[(2) currently have capital and surplus of at least \$500 million; and]~~

~~[(3) currently have at least three ratings within the top four rating categories as defined by the major insurance industry rating agencies. If not rated, a carrier may satisfy this requirement by showing that the carrier has twice the minimum financial requirements as stated in paragraphs (1) and (2) of this subsection.]~~

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

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Don Green

Chief Financial Officer

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §§41.31, 41.32, 41.34, 41.39, 41.41, 41.50

STATUTORY AUTHORITY

The amendments are proposed under the authority of Texas Insurance Code §1575.051 and 1575.052(a), relating to the adop-

tion of rules to implement TRS-Care; Texas Insurance Code §1576.006, relating to the adoption of rules for group long-term care insurance for public school employees; and Texas Insurance Code §1579.051 and §1579.052 (a), (b) and (e), relating to the adoption of rules for TRS-ActiveCare.

CROSS-REFERENCE TO STATUTE

The proposed amended rules implement the Texas Public School Retired Employees Group Benefits Act (Chapter 1575 of the Texas Insurance Code); Chapter 1576 of the Texas Insurance Code, relating to group long-term care insurance for public school employees; and the Texas School Employees Group Health Coverage Act (Chapter 1579 of the Texas Insurance Code).

§41.31. Eligible Bidders.

(a) TRS-ActiveCare [The health benefits program offered under the Texas School Employees Uniform Group Health Coverage Act] may include separate contracts for:

- (1) health benefit plans [plan];
- (2) prescription drug plans [provider];
- (3) utilization review services [administrative services];
- (4) administrative services [utilization review]; and
- (5) ancillary services.

(b) Except for health maintenance organizations, which must meet other requirements in this section, to be eligible to bid on any of the contracts in subsection (a) of this section, a bidder must comply with the minimum qualification standards contained in the applicable solicitation from TRS. [health benefit services or products; prescription drugs or administrative services; a bidder must have:]

~~[(1) annual health benefit premiums or services or product income of at least \$1 billion; and]~~

~~[(2) currently be servicing at least twice as many persons as will be covered under this program as determined by TRS.]~~

(c) TRS may approve a health maintenance organization (HMO) to offer a health benefit plan to participants in TRS-ActiveCare in areas of the state determined by TRS. TRS may establish, for different areas of the state, different criteria for HMOs to qualify to offer a health benefit plan. TRS may at any time establish or change the number, if any, of HMOs approved to offer a health benefit plan in each area of the state. In order to be approved [eligible to bid], an HMO must satisfy all of the following conditions:

(1) The HMO must hold a valid certificate of authority issued by the Texas Department of Insurance to operate in the State of Texas.

(2) The HMO must [have been providing services in the applicable service area for at least 12 months prior to the date the bid response is due to be filed with TRS. Also, the HMO must] demonstrate the capacity to provide adequate services, as determined by TRS, to the [program] participants in TRS-ActiveCare.

(3) [The HMO must submit a responsive bid, with rates, to TRS within the timeframe and in the manner and format prescribed by TRS.] Once adopted by TRS, the rates and benefits submitted by an HMO [benefit] may not be modified during a plan year without the prior written approval of TRS.

(4) A request for expansion of a [to a non-contiguous] service area shall require a separate responsive bid and approval by TRS.

(5) The HMO must comply with the other minimum qualification standards contained in the applicable solicitation from TRS.

~~[(4) Any other criteria established by TRS.]~~

~~[(d) TRS shall use a competitive bidding process to approve one or more HMOs to offer a health benefit plan to TRS-ActiveCare participants in areas of the state determined by TRS. TRS may establish, for different areas of the state, different criteria for HMOs to qualify to bid. TRS may at any time establish or change the number, if any, of HMOs to approve in each area. If TRS elects to request bids for such plans, TRS will establish:]~~

~~[(1) the criteria to be used to approve HMOs;]~~

~~[(2) the length and terms of the contracts with approved HMOs; and]~~

~~[(3) other matters at the discretion of TRS.]~~

§41.32. Bid Procedure.

(a) All bids for contracts under TRS-ActiveCare must be submitted in compliance with the bid requirements provided by TRS ~~[must be received no later than the date and time set by the Teacher Retirement System of Texas (TRS). Late bids will be returned to the bidder unopened. Late bids will not be considered under any circumstances].~~

(b) The bid opening shall take place at a date and time set by TRS.

(c) In determining the quality of the bids, TRS ~~[the Board of Trustees or its designee]~~ may consider such factors and criteria as it deems ~~[they deem]~~ relevant and appropriate under the circumstances.

(d) ~~[Bids must be valid for at least 120 days following the proposal receipt date.]~~

~~[(e)]~~ TRS shall not provide compensation to bidders for any expenses incurred by the bidder for bids preparation or for any demonstrations that may be made. Bidders submit bids at their own risk and expense.

§41.34. Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program.

The following persons are eligible to be enrolled in TRS-ActiveCare under terms, conditions and limitations established by the trustee unless expelled from the program under provisions of Chapter 1579, Insurance Code:

(1) A full-time employee as defined in §41.33 of this title ~~[chapter]~~ (relating to Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program).

(2) A part-time employee as defined in §41.33 of this title ~~[chapter]~~.

(3) Dependents, as defined in §41.33 of this title ~~[chapter]~~ pursuant to §1579.004, Insurance Code. A child defined in §1579.004(3), Insurance Code, who is 26 years of age or older, is eligible for coverage only if, and only for so long as, such child's mental disability or physical incapacity is a medically determinable condition that prevents the child from engaging in self-sustaining employment as determined by TRS.

(4) Individuals employed or formerly employed by a participating entity, and their dependents, who are eligible for, or participating in, continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), through a group health benefit plan sponsored by the individual's employer on the first day that employer becomes a participating entity if such individuals

or their dependents would have met the requirements for eligibility in paragraph (1), (2), or (3) of this section on the individual's last day of employment with the participating entity. Notwithstanding the foregoing, the individual is eligible to participate in TRS-ActiveCare only for the duration of the individual's eligibility for COBRA continuation coverage.

(5) An individual who qualifies for coverage pursuant to §41.38(b) of this title ~~[chapter]~~ (relating to Termination Date of Coverage), and their dependents.

(6) Full-time or part-time employees as defined in §41.33 of this title ~~[chapter]~~ and their eligible dependents may participate in an approved HMO if they reside, live, or work in the approved service area of the HMO and are otherwise eligible to participate in the HMO under the terms of the TRS contract with the HMO.

(7) Individuals who become eligible as determined by TRS for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272), through their participation in TRS-ActiveCare.

(8) ~~Individuals [As a result of a special enrollment event that occurs on or after September 1, 2011, individuals]~~ who become eligible for coverage under the special enrollment provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)).

~~[(9) As a result of a special enrollment event that occurs on or before August 31, 2011, individuals who become eligible for coverage under the special enrollment provisions of TRS-ActiveCare.]~~

(9) ~~[(10)]~~ Any other individuals who are required to be covered under applicable law.

§41.39. Coverage for Individuals Changing Employers.

(a) A full-time or part-time employee enrolled in TRS-ActiveCare who, on or after September 1, 2011, changes employment from one participating entity to another participating entity within the same plan year may not change coverage plans or add dependents unless:

(1) changes to add dependents are authorized due to a special enrollment event under provisions of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996));

(2) an open-enrollment period exists on the first day of the new employment and the full-time or part-time employee makes such changes in compliance with open-enrollment conditions prescribed by the trustee; or

(3) the new employment is with a participating entity that does not make available the option under which the individual was covered on the last date of previous employment, provided that options are offered under TRS-ActiveCare that are not applicable to all participating entities.

(b) A full-time or part-time employee enrolled in TRS-ActiveCare who, on or before August 31, 2011, changes employment from one participating entity to another participating entity within the same plan year may not change coverage plans or add dependents unless:

(1) changes to add dependents are authorized due to a special enrollment event under special enrollment provisions of TRS-ActiveCare;

(2) an open-enrollment period exists on the first day of the new employment and the full-time or part-time employee makes such changes in compliance with open-enrollment conditions prescribed by the trustee; or

(3) the new employment is with a participating entity that does not make available the option under which the individual was covered on the last date of previous employment, provided that options are offered under TRS-ActiveCare that are not applicable to all participating entities.

(c) No break in coverage will occur for a full-time or part-time employee enrolled in TRS-ActiveCare who changes employment from one participating entity to another participating entity within the same plan year if all the criteria set forth in paragraphs (1) - (3) of this subsection are met. The former employer participating entity shall determine the last date of employment for purposes of this subsection.

(1) The new employer makes available the same coverage option under which the full-time or part-time employee was enrolled on the last day of employment with the former employer;

(2) The individual is employed by the new participating entity no later than the last day of the next calendar month after the last date of employment with the former participating entity employer; and

(3) The individual promptly files an election to continue coverage with the new participating entity employer with coverage to be effective in the calendar month in which the individual is first employed with the new participating entity.

(d) Full-time or part-time employees who initially waive coverage under TRS-ActiveCare may enroll during any open-enrollment period as prescribed by the trustee; however, they may not enroll due to a change in employment from one participating entity to another during the same plan year unless the change occurs during a concurrent open enrollment or the employee satisfies the requirements for an enrollment opportunity provided under Rule 41.36(b) of this title.

§41.41. Premium Payments.

~~[(a) For each bill generated by TRS or its designee on or before August 31, 2013, each participating entity shall remit to TRS the amount on each bill directed to the participating entity by TRS or the administering firm. The participating entity shall remit payment on or before the sixth day after the last day of each month in which TRS or the administering firm issued a bill. Payment shall be delivered in the same manner (e.g., currently, TEXNET) in which the participating entity delivers retirement contributions. Any waiver granted to a participating entity under §825.408(a), Government Code, does not apply to amounts billed under this section or to amounts otherwise owed to TRS for TRS-ActiveCare.]~~

(a) ~~[(b) Each [For each bill generated by TRS or its designee on or after September 1, 2013, each] participating entity shall remit to TRS the amount on each bill directed to the participating entity by TRS or the administering firm. The participating entity shall remit payment on or before the fifteenth day of each month in which TRS or the administering firm issued a bill. Payment shall be delivered in the same manner (e.g., currently, TEXNET) in which the participating entity delivers retirement contributions. Any waiver granted to a participating entity under §825.408(a), Government Code, does not apply to amounts billed under this section or to amounts otherwise owed to TRS for TRS-ActiveCare.]~~

(b) ~~[(e)]~~ A participating entity will be billed for all full-time and part-time employees enrolled in TRS-ActiveCare who were employed by the participating entity on the date that TRS or its designee generates the bill for that billing month as reported by the participating entity. In addition, a participating entity will be billed retroactively for all full-time and part-time employees who enroll after the date on which the bill is generated for that month and choose coverage for that month. A participating entity will also be billed for any individual covered in accordance with §41.40 of this title (relating to Coverage Continuation

While on Leave Without Pay). Participating entities are responsible for collecting all applicable premiums and other costs that are required to be paid by its full-time employees, part-time employees, and any individuals covered in accordance with §41.40 of this title. A participating entity shall remit the full amount billed each month.

(c) ~~[(d)]~~ Participating entities shall not modify the amount of any bill or remit any amount different from the amount billed. A participating entity shall report adopted adjustments, including those seeking credit for terminated employees, to the administering firm no later than the 45th day after the billing date. TRS may reject any adopted adjustments that are inappropriate or untimely, including those adjustments seeking credit for terminated employees reported later than 45 days after the billing date on which the employee was first incorrectly reported as eligible for coverage. Approved adjustments will be reflected on a subsequent bill.

(d) ~~[(e)]~~ TRS may take corrective action against a participating entity that fails to remit payment in accordance with the timelines and other requirements of this section, including but not limited to placement of a warrant hold with the Comptroller of Public Accounts.

§41.50. Appeals Relating to Claims or Other Benefits.

(a) For appeals that relate to claims or other benefits ~~[and that are received on or after September 1, 2011]~~, the following procedures apply:

(1) A person enrolled in TRS-ActiveCare, other than a person enrolled in a health maintenance organization (HMO) participating in TRS-ActiveCare, who is denied payment of a claim or other benefit ("Claimant") may appeal the denial through a written request filed with the administering firm in accordance with procedures established by the administering firm.

(2) The final decision by the administering firm or by any external review organization, whichever occurs later, shall be the final decision on the appeal.

~~[(b) For appeals that relate to claims or other benefits and that are received before September 1, 2011, the following procedures apply:]~~

~~[(1) A Claimant may appeal the denial through a written request filed with the administering firm in accordance with procedures established by the administering firm. All such procedures must be exhausted before the administering firm will issue a final decision.]~~

~~[(2) A Claimant may appeal the final denial of the claim or other benefit by the administering firm to the Teacher Retirement System of Texas (TRS), acting in its capacity as trustee of TRS-ActiveCare.]~~

~~[(3) An appeal made pursuant to paragraph (2) of this subsection must be submitted by the Claimant in writing and received by TRS before September 1, 2011 and no later than 60 days after the date of the letter from the administering firm finally denying the claim. The appeal shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.]~~

~~[(4) An appeal made pursuant to paragraph (2) of this subsection shall state the nature of the claim and shall include copies of all relevant documents that were considered by the administering firm, including copies of the correspondence to and from the administering firm.]~~

~~[(5) The TRS Appeal Committee ("Committee") is responsible for review and determination of appeals made pursuant to paragraph (2) of this subsection. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Financial Officer and shall serve at the discretion~~

of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Financial Officer.}]

[(6) The Committee shall apply the TRS-ActiveCare plan design and rules in effect on the date the first of the following events occurs:}]

[(A) the date the claim was incurred; or}]

[(B) the date the benefit was denied by the administering firm.}]

[(7) If the Committee determines that the claim should be paid or a benefit allowed, it shall so inform the administering firm and the Claimant.}]

[(8) If the Committee determines that the information submitted with the appeal supports the denial by the administering firm, the Committee shall provide a written decision, which shall include an explanation of the reasons for the decision, to the Claimant and to the administering firm. The written decision shall include information on how the Claimant may request an appeal conference or an appeal to the executive director.}]

[(9) The initial written decision of the Committee may be appealed by the Claimant to the Committee for an appeal conference. A request for an appeal conference must be submitted by the Claimant in writing and must be received by TRS no later than 45 days after the date of the initial written decision by the Committee. The request for an appeal conference shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.}]

[(10) Upon receipt of a timely request for an appeal conference, the TRS-ActiveCare Grievance Administrator shall schedule an appeal conference with the Committee. The Grievance Administrator shall notify the Claimant and the administering firm of the time, date, and manner of the conference, as well as the procedures applicable to the conference.}]

[(11) At any time prior to the appeal conference, the Committee may decide to grant the appeal and will notify the Claimant of this determination without the necessity of an appeal conference. The Committee cannot deny a claim after an appeal conference has been requested without holding the conference, but the initial denial by the Committee shall stand until the conference is held.}]

[(12) At the conference, the Committee shall consider the medical information previously submitted to the administering firm in support of the payment of the claim or benefit, as well as the administering firm's determination regarding medical issues. The Committee may request additional review by the administering firm on medical issues before the Committee issues a decision.}]

[(13) The Committee shall decide the appeal and shall notify the Claimant and the administering firm of the decision in writing. The decision will include an explanation of the basis for the decision.}]

[(14) The initial written decision of the Committee or the written decision by the Committee made pursuant to an appeal conference may be appealed by the Claimant to the executive director. A request for an appeal to the executive director must be submitted by the Claimant in writing and must be received by TRS no later than 45 days after the date of the initial written decision by the Committee or no later than 30 days after the date of the written decision by the Committee made pursuant to an appeal conference. The request for an appeal to the executive director shall be directed to the attention of the TRS-ActiveCare Grievance Administrator. The appeal shall specifically describe why the Claimant alleges that the Committee's decision is erroneous. The executive director shall make a decision based on the written appeal and based on the written decision of the Committee,

as well as any written documents reviewed by the Committee. Subject to paragraph (15) of this subsection and pursuant to the delegation of authority through this section, the decision of the executive director is the final decision of TRS.}]

[(15) The Committee shall review an appeal made pursuant to paragraph (2), (9), or (14) of this subsection for timeliness and may deny an appeal that is not timely received by TRS. An appeal made pursuant to paragraph (2), (9), or (14) of this subsection that is denied because TRS did not timely receive the appeal is a final decision by TRS.}]

(b) [(e)] For appeals that relate to claims or other benefits, persons enrolled in an HMO under contract with TRS-ActiveCare shall follow the appeal procedures set out by the HMO.

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

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901637

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 542-6438



CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

34 TAC §47.17

The Teacher Retirement System of Texas (TRS) proposes amendment to rule §47.17, relating to Calculation for Alternate Payee Benefits Before a Member's Benefit Begins, in Title 34, Part 3 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

TRS proposes to amend §47.17 to incorporate three actuarial tables used to calculate distributions made to an alternate payee under Government Code §804.005. The proposed amendment incorporate new actuarial tables into the rule that have been updated based on the TRS Board of Trustees (Board) most recently approved mortality assumptions and new investment return assumption. The new actuarial tables were prepared by the TRS actuary of record, Gabriel, Roeder, Smith & Company.

The proposed amended rule and updated tables are proposed to become effective on September 1, 2019, and will generally be used to calculate the benefits for all distributions made to an alternate payee under Government Code §804.005 and will be effective in the 2019-2020 school year and going forward.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amendment to rule §47.17 will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amendment to rule §47.17.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amendment to rule §47.17 will be in effect, Mr. Green also has determined

that the public benefit anticipated as a result of adopting the proposed amendment to rule §47.17 will be to ensure that TRS administers the TRS retirement plan in accordance with the latest actuarial assumptions adopted by the Board. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amendment to rule §47.17. To the extent the newly incorporated actuarial tables increase the reduction of the amount of a distribution payable to an alternate payee under the proposed amended rules, this reduction results from TRS's obligation to comply with Government Code §804.005 that requires that a distribution made pursuant to that section be the actuarial equivalent of the accrued retirement benefit of the member of the retirement system.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendment to rule §47.17. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amendment to rule §47.17. Therefore, no local employment impact statement is required under Government Code §2001.022 and §2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amendment to rule §47.17 will be in effect the proposed amendment will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed amendment to rule §47.17, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amendment to rule §47.17 because the proposed amendment does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The amendment to rule §47.17 is proposed under the authority of Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system,

and the transaction of business of the board, and Government Code §804.005, which requires that a distribution made pursuant to that section be the actuarial equivalent of the accrued retirement benefit of the member of the retirement system, determined as if the member retired on the date of the alternate payee's election.

CROSS-REFERENCE TO STATUTE

The proposed amendment to rule §47.11 implements Chapter 804, Subchapter A, Texas Government Code, concerning Qualified Domestic Relations Orders.

§47.17. Calculation for Alternate Payee Benefits Before a Member's Benefit Begins.

(a) - (g) (No change.)

(h) TRS will use Tables for Life Annuity Factors, Interest Annuity Factors, and Interest Accumulation Factors furnished by the TRS actuary of record.

Figure: 34 TAC §47.17(h)

[Figure: 34 TAC §47.17(h)]

(i) - (z) (No change.)

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

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901630

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 542-6438

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning Definitions, pursuant to changes to the OT Practice Act, Occupations Code, Chapter 454, made by SB 317 from the 85th Regular Legislative Session, pertaining to the repeal of occupational therapy facility registration.

The amendment is proposed to revise the definition of "Investigation Committee" to remove the facilities reference therein in accordance with changes in statute to the OT Practice Act pursuant to SB 317, which repeals requirements concerning the registration of occupational therapy facilities.

Other proposed rule changes regarding facility registration have been submitted to the *Texas Register* for publication, including the proposed repeal of Chapter 376, concerning registration of facilities; and proposed amendments to §374.1, concerning disciplinary actions, and §374.2, concerning detrimental practice.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendment would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rule as the change does not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rule would not impact a local economy as the proposed rule concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has determined that for each of the first five years the proposed amendment would be in effect, the public benefit anticipated as a result of enforcing the rule would be the reduction of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed rule.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rule concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendment's impact on government growth during the first five years the rule would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand an existing regulation; would repeal an existing regulation by removing language concerning facilities from the definition of Investigation Committee; would not increase the number of individuals subject to the rule's applicability; would decrease the number of individuals subject to the rule's applicability; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rule because the rule does not impose a cost, and it does not increase costs to regulated persons, and because it is necessary to implement SB 317 from the 85th Regular Legislative Session.

PUBLIC COMMENT

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite

2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendment is published in the *Texas Register*.

STATUTORY AUTHORITY

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(3) AOTA--American Occupational Therapy Association.

(4) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) Certified Occupational Therapy Assistant (COTA®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.

(7) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed \$4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(8) Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(9) Complete Application--Application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(10) Complete Renewal--Contains renewal fee, renewal form with continuing education submission form, home/work address(es) and phone number(s), jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(11) Continuing Education Committee--Reviews and makes recommendations to the Board concerning continuing education requirements and special consideration requests.

(12) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(13) Endorsement--The process by which the Board issues a license to a person currently licensed in another state or territory of the United States that maintains professional standards considered by the Board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in §454.207 of the Practice Act (relating to License Examination). The current Examination is the initial certification examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(18) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(19) Investigation Committee--Reviews and makes recommendations to the Board concerning complaints and disciplinary actions regarding licensees [and facilities].

(20) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board.

(21) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. This test is an open book, online examination with multiple choice and/or true-false questions. The passing score is at least 70%.

(22) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(23) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(24) NBCOT--National Board for Certification in Occupational Therapy.

(25) Non-Licensed Personnel--OT Aide or OT Orderly or other person not licensed by this Board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and supervision.

(26) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which do not require the routine intervention of a physician.

(27) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(28) Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(29) Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(30) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).

(31) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(32) Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(33) Occupational Therapy Practitioners--Occupational Therapists and Occupational Therapy Assistants licensed by this Board.

(34) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(35) Place(s) of Business--Any facility in which a licensee practices.

(36) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this Board may practice occupational therapy in Texas, and the site of practice is the location in Texas where the client is located at the time of the provision of services.

(37) Rules--Refers to the TBOTE Rules.

(38) Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(39) Telehealth--A mode of service delivery for the provision of occupational therapy services delivered by an occupational

therapy practitioner to a client at a different physical location using telecommunications or information technology. Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this Board with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health services.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901614

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 14, 2019

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



CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §367.1, concerning continuing education, §367.2, concerning categories of education, and §367.3, concerning continuing education audit. The amendments are proposed to revise continuing education (CE) requirements including to change the number of continuing education hours required for renewal, to remove certain courses from the list of unacceptable activities, to add a provision concerning under what circumstances a licensee may count continuing education hours earned outside of the renewal cycle toward the required continuing education, to revise requirements concerning pre-approved continuing education, to expand the categories of continuing education and make changes therein, to revise a provision concerning requests for special consideration for continuing education, and to clarify and cleanup provisions in the sections.

Changes to §367.1 include reducing the number of required continuing education hours per renewal period from thirty to twenty-four hours and to include language that unless otherwise specified in the chapter, one hour of continuing education is equal to one contact hour. A provision is also being proposed to the section to add that licensees who submit their renewal with all required items prior to the month when their license expires may count CE completed during their license's expiration month for their next renewal period. Additional changes to §367.1 include removing a number of courses from the list of activities not acceptable for continuing education. The proposed amendments also clarify that all continuing education activities that are approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the Board.

The amendments to the section include further cleanups, including removing a provision requiring that those renewing a license more than ninety days late must submit proof of continuing education for the renewal as §370.1, concerning license renewal, of the OT Rules, already contains a provision addressing the submission of CE documentation for late renewal.

Changes to §367.2 would revise the categories of continuing education and the requirements therein and include cleanups to the section to use the term "contact hours" consistently and to remove redundant language. Revisions to the categories of continuing education include amendments regarding the CE a licensee may earn for the supervision of fieldwork students. In addition, the category was expanded to allow a licensee to earn credit for the supervision of a student completing a supervised project for the accredited educational program and for the supervision of a student completing a re-entry course through an accredited college or university. The proposed amendments would also revise the continuing education credit a licensee may earn for the completion of NBCOT Navigator activities and would authorize continuing education credit for completion of the AOTA Benchmark. In addition, a provision concerning a request for special consideration for continuing education has been revised to add that such must be submitted in writing a minimum of 60, though no more than 270, days prior to expiration of the license.

Proposed changes to the section include further clarifications, cleanups, and revisions including the removal of language concerning §373.3 of the OT Rules, which concerned supervision of an occupational therapy assistant, as that section has been repealed from the OT Rules.

Changes to §367.3 concern cleanups and clarifications and add that documentation of continuing education includes letters of verification and that hours may be listed on continuing education documentation.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rules as the changes do not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rules would not impact a local economy as the proposed rules concern the cleanup and reduction of occupational therapy regulations and the expansion of opportunities to earn continuing education credit and do not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rules would be the cleanup and reduction of occupational therapy regulations and the expansion of opportunities to earn continuing education credit. There would be no anticipated economic cost to persons required to comply with the proposed rules.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rules concern the cleanup and reduction of occupational therapy regulations and the expansion of opportunities to earn continuing education credit and do not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis are not required for the amendments.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rules would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new or expand an existing regulation; would repeal certain existing regulations by removing the requirement that occupational therapy practitioners complete thirty hours of continuing education each renewal period and replacing such with the requirement that they earn twenty-four hours each renewal period and by removing further restrictions regarding continuing education; would not increase or decrease the number of individuals subject to the rule's applicability; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed amendments because the amendments do not impose a cost, and they do not increase costs to regulated persons.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All activities taken to complete this requirement must meet the definition of continuing education as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education activities and for selecting continuing education as per the requirements in this chapter.

(1) Definition of Continuing Education; also known as CE. Continuing Education - Professional development activities that meet the requirements in this chapter and directly concern one or more of the following:

- (A) occupational therapy practice as defined in §362.1 of this title (relating to Definitions),
- (B) health conditions treated by occupational therapy,
- (C) ethical or regulatory matters in occupational therapy, or

(D) occupational therapy documentation or reimbursement for occupational therapy services.

(2) Unacceptable Activities. Unacceptable professional development activities not eligible for continuing education [regardless of the provider or pre-approved status] include but are not limited to:

(A) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(B) Business meetings.

(C) Exhibit hall attendance.

(D) Reading journals.

(E) Courses that provide information about the work setting's philosophy, policies, or procedures or designed to educate employees about a specific work setting.

(F) Courses in topics concerning professionalism or customer service.

(G) Courses such as: [massage therapy, management and business administration,] social work, defensive driving, water safety, team building, leadership, GRE, GMAT, MCAT preparation, reading techniques, general foreign languages, communicable/infectious diseases, patient abuse, disposal of hazardous waste, patient privacy, CPR, First Aid, HIPAA, and FERPA, blood-borne pathogens, or similar courses].

(b) Required Continuing Education Hours.

(1) Unless otherwise specified in this chapter, 1 hour of continuing education is equal to 1 contact hour.

(2) All licensees must complete a minimum of 24 contact hours every two years during the period of time the license is current in order to renew the license. Licensees must provide proof of completion of contact hours at the Board's request.

(3) Licensees who submit their renewal with all required items prior to the month when their license expires may count CE completed during their license's expiration month for their next renewal period.

~~[(b) All licensees must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license and must provide this information as requested.]~~

~~[(c) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.]~~

~~(c) [(d)] Each continuing education activity may be counted only one time in two renewal cycles.~~

(d) Activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved for CE credit for license renewal. The Board will review its approval process and continuation thereof for educational activities at least every five years.

~~[(e) Educational activities that meet the criteria for continuing education as per this chapter that are approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the Board. Licensees are responsible for choosing CE that meets requirements as per this chapter, regardless of the activity's provider or pre-approved status. The Board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.]~~

~~(e) [(f)] Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.~~

§367.2. Categories of Education.

Continuing education activities completed by the licensee for license renewal shall be acceptable if falling under one or more of the following categories and meeting further requirements in this chapter.

(1) Formal academic courses from an occupational therapy program.

(A) Completion of course work at or through an accredited college or university shall be counted as follows: 3 contact [three CE] hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a 3 credit [three-credit] course counts for 9 contact hours [of continuing education], no maximum. Documentation [of this type of CE credit] shall include a transcript from the accredited college or university.

(B) Creation of a new course or courses at or through an accredited college or university may be counted for 10 contact hours maximum. Documentation [Proof of this type of CE] shall be a letter from the Program Director.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility based courses, internet-based courses, [and] conferences, and home-study courses with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation [of this type of CE credit] shall include a certificate of completion or letter of verification.

(3) Development of publications, media materials, or grant/research [research/grant] activities. [per two year renewal period:] Documentation [of this type of CE credit] shall include a copy of the actual publication or media material(s) or a letter of verification documenting acceptance for publication or distribution, or title page and receipt of grant or research proposal.

(A) Published scholarly work in a peer-review journal.[:]

(i) Primary or second author, 15 contact hours maximum.

(ii) Other author, consultant, reviewer, or editor, 5 contact hours maximum.

(B) Grant or research proposals accepted for consideration.[:]

(i) Principal investigator or co-principal investigator, 10 contact hours maximum.

(ii) Consultant or reviewer, 4 contact hours maximum.

(C) Published book.[:]

(i) Primary author or book editor, 15 contact hours maximum.

(ii) Second or other author, 7 contact hours maximum.

(iii) Consultant or reviewer, 5 contact hours maximum.

(D) Published book chapter or monograph.[:]

(i) Primary author, 7 contact hours maximum.

(ii) Second or other author, consultant, reviewer, or editor, 2 contact hours maximum.

(E) Author, consultant, reviewer, or editor of other practice related publications such as newsletters, blogs, and trade magazines, 2 contact hours maximum.

(F) Developer of practice-related or instructional materials using alternative media such as video, audio, or software programs or applications to advance the professional skills of others (not for proprietary use), 15 contact hours maximum.

~~[(4) Home study courses, educational teleconferences, Internet-based courses, and video instruction, no maximum.]~~

~~[(A) These courses must have:]~~

~~[(i) Specified learning objectives;]~~

~~[(ii) A post-test; and]~~

~~[(iii) A certificate of completion or letter of verification.]~~

~~[(B) Educational teleconferences or Internet courses must reflect a pre-determined number of contact hours.]~~

~~(4) [(5)] Presentations by licensee[.]. Documentation [of this type of CE credit] shall include verification of presentation noting the date, title, and number of contact hours of the presentation, presenter(s), and type of presentation (i.e., 2 hour poster, 3 hour workshop). Any presentation may be counted only once.~~

~~(A) Professional presentation, e.g. in-services, workshops, institutes[. Any presentation counted only one time]. Hour for hour credit. 10 contact hours maximum.~~

~~(B) Community/Service organization presentation[. Any presentation counted once]. Hour for hour credit. 10 contact hours maximum.~~

(5) Supervision of students completing an accredited educational program or re-entry course.

(A) A licensee may earn a maximum of 10 contact hours for student supervision per renewal period.

(B) Fieldwork Supervision.

(i) Fieldwork Level 1: A licensee may earn .025 contact hours for each hour of supervision provided to a student.

(ii) Fieldwork Level 2:

(I) A licensee may earn 6 contact hours for 8 weeks of supervision provided to a student.

(II) A licensee may earn 9 contact hours for 12 weeks of supervision provided to a student.

(III) Licensees may divide fieldwork supervision hours based on the supervision provided.

(iii) Documentation shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

(C) Student Project Supervision.

(i) A licensee may earn .025 contact hours for each hour of supervision provided to a student completing a supervised project for the accredited educational program.

(ii) Documentation shall include the following:

(I) verification provided by the school to the supervisor with the name of the student, school and academic program, and dates of the semester for which the project was completed, and

(II) an attestation signed by the licensee and the student or school attesting to the dates and hours of supervision and the activities completed.

(D) Supervision of a Re-Entry Student.

(i) A licensee may earn CE for the supervision of a student completing a re-entry course through an accredited college or university.

(ii) A licensee may earn 3 contact hours for 4 weeks of supervision.

(iii) A licensee may earn 6 contact hours for 8 weeks of supervision.

(iv) Licensees may divide fieldwork supervision hours based on the supervision provided.

(v) Documentation shall include verification provided by the school to the supervisor(s) with the name of the student, school and re-entry program, and dates of the supervision rotation or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

[(6) Fieldwork Supervision: 10 hours maximum.]

[(A) A licensee may earn 2 contact hours for each Level 1 student supervised:]

[(i) 40 hours of Level 1 equals 1 hour of CE; or]

[(ii) 80 hours of Level 1 equals 2 hours of CE.]

[(B) A licensee may earn 8 contact hours for each Level 2 student supervised:]

[(i) 8 weeks equals 6 hours of CE; or]

[(ii) 12 weeks equals 8 hours of CE.]

[(C) A licensee may earn a maximum of 10 contact hours for fieldwork supervision per renewal period.]

[(D) Fieldwork supervision hours may be evenly divided between licensees; not to exceed two fieldwork educators per student.]

[(E) Fieldwork supervision must be completed before the licensee's renewal date.]

[(F) Documentation of this type of CE credit shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.]

[(6) [(7)] Mentorship.[.]]

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S. [Supervision hours as per §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant) are not eligible for continuing education hours.]

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met

by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee: A licensee may earn one contact hour [of CE] for each 3 hours spent in activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 contact [CE] hours.

(D) Participation as Mentor: A licensee may earn one contact hour [of CE] for each 5 hours spent in activities as a mentor up to a maximum of 10 contact [CE] hours.

(7) [(8)] Participation in volunteer activities related to occupational therapy including service on a committee, board, or commission of a state occupational therapy association, AOTA, or NBCOT for the purpose of tangible outcomes such as official documents, publications, and official reports. Documentation [of this type of CE credit] shall include a copy of the actual publication or official document/report that [which] reflects the licensee's name. Maximum of 10 contact hours.

(8) [(9)] NBCOT Navigator®[™] Activities. [.] Licensees may earn CE [up to 2 contact hours of CE] for the completion of NBCOT Navigator activities. For such activities, 1 NBCOT CAU is the equivalent of 1 contact hour, no maximum [25 CE hours]. Documentation [of this type of CE] is a certificate of completion or letter of verification. Self-reflections and self-assessments, reading list and research portal activities, professional development plans, or similar activities are not eligible for CE credit.

(9) AOTA Benchmark. Licensees may earn CE for the completion of the AOTA Benchmark. Documentation is a certificate of completion or letter of verification indicating credit awarded. No maximum.

(10) Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60, though no more than 270, days prior to expiration of the license.

§367.3. Continuing Education Audit.

(a) The Board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes.

(d) Continuing education documentation includes, but is not limited to: an official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, [and] certificates of completion, and letters of verification.

(e) Documentation must identify the licensee by name, and must include the date and title of the course, the name and signature of the authorized signer, and the number of hours or contact hours awarded for the course. When continuing education units (CEUs), professional development units (PDUs), or other units or credits are listed

on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of contact hours.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901612

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 14, 2019

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



CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LI-CENSURE OF PERSONS WITH CRIMINAL CONVICTIONS

40 TAC §374.1, §374.2

The Texas Board of Occupational Therapy Examiners proposes amendments to §374.1, concerning disciplinary actions, and §374.2, concerning detrimental practice, pursuant to changes to the OT Practice Act, Occupations Code, Chapter 454, made by SB 317 from the 85th Regular Legislative Session, including pertaining to the repeal of occupational therapy facility registration.

The amendments, required to enact statutory changes to the OT Practice Act pursuant to SB 317, are proposed to remove from the chapter facilities related language concerning disciplinary actions and detrimental practice and to add language regarding the expunction of facility related violations.

Changes to §374.1 would remove from the section references to facilities in a provision concerning understanding and complying with the OT Practice Act and the OT Rules and a provision concerning the publishing of final disciplinary actions taken by the Board. In addition, the proposal would add to §374.1 that "The board may expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet the registration requirements of §454.215 of the Act (relating to Occupational Therapy Facility Registration), as that section existed on January 1, 2019. The board may not expunge a record under this subsection after September 1, 2021." The provision is being proposed pursuant to SB 317 and the addition to the OT Practice Act of §454.307, concerning record of disciplinary action and expungement.

The changes would also eliminate failure to register or renew a facility registration and practicing in an unregistered facility from the list of practices considered detrimental to the public health and welfare in §374.2 and from a schedule of sanctions in §374.1.

Other proposed rule changes regarding facility registration have also been submitted to the *Texas Register* for publication, including the proposed repeal of Chapter 376, concerning registration of facilities, and a proposed amendment to §362.1, concerning definitions.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rules as the changes do not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rules would not impact a local economy as the proposed rules concern the reduction of occupational therapy regulations and do not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rules would be the reduction of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed rules.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rules concern the reduction of occupational therapy regulations and do not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rules would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new or expand an existing regulation; would repeal an existing regulation by removing language concerning facilities from the list of practices considered detrimental to the public health and welfare and from the schedule of sanctions; would not increase the number of individuals subject to the rule's applicability; would decrease the number of individuals subject to the rule's applicability as the amendments would remove facility related language from provisions concerning understanding and complying with the OT Act and Rules and from provisions concerning detrimental practice and the schedule of sanctions; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rules because the rules do not impose a cost, and they do not increase costs to regulated persons, and because they are necessary to implement SB 317 from the 85th Regular Legislative Session.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§374.1. Disciplinary Actions.

(a) The board, in accordance with the Administrative Procedure Act, may deny, revoke, suspend, or refuse to renew or issue a license, or may reprimand or impose probationary conditions, if the licensee or applicant for licensure has been found in violation of the rules or the Act. The board will adhere to procedures for such action as stated in the Act, §§454.301, 454.302, 454.303, and 454.304.

(b) The board recognizes four levels of disciplinary action for its licensees.

(1) Level I: Order and/or Letter of Reprimand or Other Appropriate Disciplinary Action (including but not limited to community service hours).

(2) Level II: Probation--The licensee may continue to practice while on probation. The board orders the probationary status which may include but is not limited to restrictions on practice and continued monitoring by the board during the specified time period.

(3) Level III: Suspension--A specified period of time that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon the successful completion of the suspension period, the license will be reinstated upon the licensee successfully meeting all requirements.

(4) Level IV: Revocation--A determination that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon passage of 180 days, from the date the revocation order becomes final, the former licensee may petition the board for re-issuance of a license. The former licensee may be required to re-take the Examination.

(c) The board shall utilize the following schedule of sanctions in all disciplinary matters.

Figure: 40 TAC §374.1(c)

[Figure: 40 TAC §374.1(e)]

(d) The board shall consider the following factors in conjunction with the schedule of sanctions when determining the appropriate penalty/sanction in disciplinary matters:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation;

(5) the economic harm to the public interest or public confidence caused by the violation;

(6) whether the violation was intentional; and

(7) any other matter that justice requires.

(e) Licensees who [~~and facilities which~~] provide occupational therapy services are responsible for understanding and complying with Chapter 454 of the Occupations Code (the Occupational Therapy Practice Act), and the Texas Board of Occupational Therapy Examiners' rules.

(f) Final disciplinary actions taken by the board will be routinely published as to the names and offenses of the licensees [~~or facilities~~].

(g) A licensee who is ordered by the board to perform certain act(s) will be monitored by the board to ensure that the required act(s) are completed per the order of the board.

(h) The board may expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet the registration requirements of §454.215 of the Act (relating to Occupational Therapy Facility Registration), as that section existed on January 1, 2019. The board may not expunge a record under this subsection after September 1, 2021.

(i) [~~(h)~~] A licensee or applicant is required to report to the board a felony of which he/she is convicted within 60 days after the conviction occurs.

§374.2. Detrimental Practice.

The Act, §454.301(a)(6) states "practiced occupational therapy in a manner detrimental to the public health and welfare," which is defined but not limited to the following:

(1) impersonating another person holding an occupational therapy license or allowing another person to use his or her license;

(2) using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare;

(3) failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession;

(4) intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report;

(5) intentionally harassing, abusing, or intimidating a patient either physically or verbally;

(6) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage,

regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code, §§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations;

(7) recommending or prescribing therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or other consideration from the third person;

(8) breaching the confidentiality of the patient/therapist relationship;

(9) failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards;

(10) practicing occupational therapy after the expiration of a temporary, provisional, or regular license;

(11) violation of Chapter 373 of this title (relating to Supervision);

(12) advertising in a manner which is false, misleading, or deceptive;

~~[(13) failing to register an occupational therapy facility which is not exempt or failing to renew the registration of an occupational therapy facility which is not exempt;]~~

~~[(14) practicing in an unregistered occupational therapy facility which is not exempt;]~~

(13) [~~(15)~~] failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or delay of patient treatment for those patients/clients under the licensee's care; or

(14) [~~(16)~~] failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901619

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 14, 2019

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



CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §§376.1 - 376.10

The Texas Board of Occupational Therapy Examiners proposes the repeal of Chapter 376, concerning registration of occupational therapy facilities, pursuant to changes to the OT Practice Act, Occupations Code, Chapter 454, made by SB 317 from the 85th Regular Legislative Session, pertaining to the repeal of occupational therapy facility registration.

The repeal is proposed in order to discontinue the registration of occupational therapy facilities as mandated by changes to the OT Practice Act pursuant to SB 317 in the 85th Regular Legislative Session. The repeal would remove from the OT Rules requirements to register an occupational therapy facility with the Board and renew the registration annually and the requirement that occupational therapy practitioners may only practice in an occupational facility if that facility is registered or exempt from the registration requirement.

Other proposed amendments regarding facility registration have also been submitted to the *Texas Register* for publication, including proposed amendments to §362.1, concerning definitions, §374.1, concerning disciplinary actions, and §374.2, concerning detrimental practice.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the repeal would be in effect, there would be a probable \$361,420 loss of revenue to the state government beginning with Fiscal Year 2020. No fiscal implication to units of local government is anticipated. Mr. Maline anticipates a positive economic impact to owners of occupational therapy facilities as there would no longer be a cost of \$215 associated with registering and \$220 for renewing the registration of occupational therapy facilities.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rule would not impact a local economy as the proposed repeal concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has determined that for each of the first five years the proposed repeal would be in effect, the public benefit anticipated as a result of enforcing the repeal would be the reduction of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed repeal.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed repeal concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed repeal's impact on government growth during the first five years the repeal would be in effect is as follows: would eliminate a governmental program by eliminating the Board's requirements concerning occupational therapy facility registration; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would decrease the fees paid to the agency by a prob-

able \$361,420 annually from occupational therapy facility registration and annual renewal; would not create a new or expand an existing regulation; would repeal an existing regulation by repealing the chapter concerning occupational therapy facility registration from the OT Rules; would eliminate the number of individuals subject to the rule's applicability in that owners of occupational therapy facilities would no longer be subject to a registration and annual renewal requirement and Board licensees who practice in occupational therapy facilities would no longer be required to practice in registered facilities or facilities that are exempt from the registration requirement; and would adversely affect the state's economy by a probable \$361,420 loss of annual revenue associated with the registration and annual renewal of occupational therapy facilities.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed repeal because the repeal does not impose a cost, and it does not increase costs to regulated persons, and because it is necessary to implement SB 317 from the 85th Regular Legislative Session.

PUBLIC COMMENT

Comments on the proposed repeal may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed repeal is published in the *Texas Register*.

STATUTORY AUTHORITY

The repeal is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§376.1. *Facility Definitions.*

§376.2. *Requirement for Practice Setting of Licensees.*

§376.3. *Requirements for Registration Application.*

§376.4. *Requirements for Registered Facilities.*

§376.5. *Exemptions to Registration.*

§376.6. *Renewal of Registration.*

§376.7. *Failure To Register.*

§376.8. *Restoration of Registration.*

§376.9. *Disciplinary Action.*

§376.10. *Change in Occupational Therapy Facility Ownership.*

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901621

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 14, 2019

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





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.7

The Texas State Board of Examiners of Psychologists withdraws the proposed amended §461.7 which appeared in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1232).

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901638

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: June 3, 2019

For further information, please call: (512) 305-7700



CHAPTER 473. FEES

22 TAC §473.1

The Texas State Board of Examiners of Psychologists withdraws the proposed amended §473.1 which appeared in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1241).

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901641

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: June 3, 2019

For further information, please call: (512) 305-7700



22 TAC §473.4

The Texas State Board of Examiners of Psychologists withdraws the proposed amended §473.4 which appeared in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1243).

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901640

Darrel D. Spinks

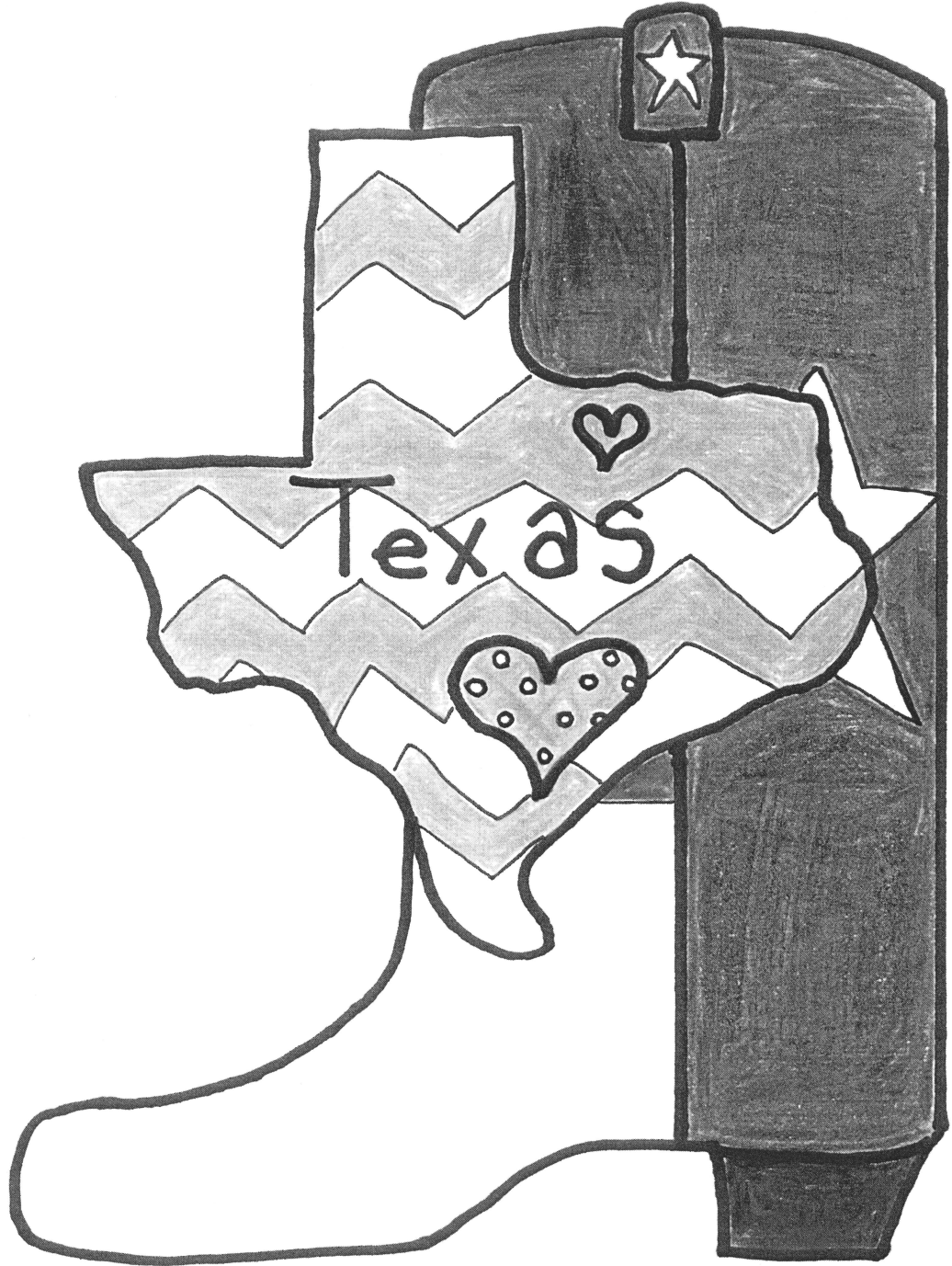
Executive Director

Texas State Board of Examiners of Psychologists

Effective date: June 3, 2019

For further information, please call: (512) 305-7700





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 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.7

The Texas State Board of Pharmacy adopts amendments to §281.7, concerning Grounds for Discipline for a Pharmacist License. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1642) and will not be republished.

The amendments update the grounds for disciplinary action against a pharmacist license after receipt of a warning notice from the board to reflect current board policies and procedures, and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901604

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Effective date: June 20, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 305-8010



CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.4

The Texas State Board of Pharmacy adopts amendments to §283.4, concerning Internship Requirements. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1645) and will not be republished.

The amendments update the pharmacist-intern requirements to reflect the board's new procedure of issuing electronic pharmacist-intern documentation.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901605

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Effective date: June 20, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 305-8010



22 TAC §283.6

The Texas State Board of Pharmacy adopts amendments to §283.6, concerning Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1648); therefore, the rules will not be republished.

The amendments remove the requirement for pharmacist preceptors to publicly display their licenses and certificates, and correct grammatical and reference errors.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation

of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551- 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901606

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Effective date: June 20, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 305-8010



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.17

The Texas State Board of Pharmacy adopts amendments to §291.17, concerning Inventory Requirements. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1649).

The amendments clarify that the annual inventory of a Class C and Class C-S pharmacy shall include a physical count of all controlled substances located in the pharmacy and all controlled substances located in other departments of the institution.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901611

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Effective date: June 20, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 305-8010



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.32

The Texas State Board of Pharmacy adopts amendments to §291.32, concerning Personnel. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1651).

The amendments allow pharmacy technicians and pharmacy technician trainees to perform data entry remotely in Class A pharmacies.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901613

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Effective date: June 20, 2019

Proposal publication date: April 5, 2019

For further information, please call: (512) 305-8010



22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34, concerning Records. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1653) and will not be republished.

The amendments remove an outdated reference to the Department of Public Safety as one of the agencies to which reports of theft or loss of controlled substances are made, remove an outdated reference to a Schedule V nonprescription register book, and correct grammatical errors.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §291.55

The Texas State Board of Pharmacy adopts amendments to §291.55, concerning Records. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1654). The rule will not be republished.

The amendments remove an outdated reference to the Department of Public Safety as one of the agencies to which reports of theft or loss of controlled substances are made and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.75

The Texas State Board of Pharmacy adopts amendments to §291.75, concerning Records. These amendments are adopted

with change to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1657). The amended rule will be republished.

The amendments remove an outdated reference to the Department of Public Safety as one of the agencies to which reports of theft or loss of controlled substances are made and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.75. *Records.*

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of §291.71 of this title (relating to Purpose), §291.72 of this title (relating to Definitions), §291.73 of this title (relating to Personnel), §291.74 of this title (relating to Operational Standards), and this section contained in Institutional Pharmacy (Class C) shall be:

(A) kept by the institutional pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system, provided:

(A) the records in the alternative data retention system contain all of the information required on the manual record; and

(B) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Outpatient records.

(1) Outpatient records shall be maintained as provided in §291.34 (relating to Records), and §291.35 (relating to Official Prescription Requirements), in chapter 291, subchapter B of this title.

(2) Outpatient prescriptions, including, but not limited to, furlough and discharge prescriptions, that are written by a practitioner must be written on a form which meets the requirements of §291.34(b)(7)(A) of this title. Medication order forms or copies thereof do not meet the requirements for outpatient forms.

(3) Controlled substances listed in Schedule II must be written on an official prescription form in accordance with the Texas Controlled Substances Act, §481.075, and rules promulgated pursuant to the Texas Controlled Substances Act, unless exempted by chapter 315 of this title (relating to Controlled Substances). Outpatient prescriptions for Schedule II controlled substances that are exempted from the official prescription requirement must be manually signed by the practitioner.

(c) Patient records.

(1) Original medication orders.

(A) Each original medication order shall bear the following information:

- (i) patient name and room number or identification number;
- (ii) drug name, strength, and dosage form;
- (iii) directions for use;
- (iv) date; and
- (v) signature or electronic signature of the practitioner or that of his or her authorized agent.

(B) Original medication orders shall be maintained with the medication administration records of the patients.

(2) Patient medication records (PMR). A patient medication record shall be maintained for each patient of the facility. The PMR shall contain at a minimum the following information:

(A) Patient information:

- (i) patient name and room number or identification number;
- (ii) gender, and date of birth or age;
- (iii) weight and height;
- (iv) known drug sensitivities and allergies to drugs and/or food;
- (v) primary diagnoses and chronic conditions;
- (vi) primary physician; and
- (vii) other drugs the patient is receiving; and

(B) Medication order information:

- (i) date of distribution;
- (ii) drug name, strength, and dosage form; and
- (iii) directions for use.

(3) Controlled substances records. Controlled substances records shall be maintained as follows:

(A) All records for controlled substances shall be maintained in a readily retrievable manner; and

(B) Controlled substances records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(4) Schedule II controlled substances records. Records of controlled substances listed in Schedule II shall be maintained as follows:

(A) Records of controlled substances listed in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records;

(B) An institutional pharmacy shall maintain a perpetual inventory of any controlled substance listed in Schedule II; and

(C) Distribution records for controlled substances listed in Schedule II shall bear the following information:

- (i) patient's name;
- (ii) prescribing or attending practitioner;
- (iii) name of drug, dosage form, and strength;
- (iv) time and date of administration to patient and quantity administered;
- (v) name, initials, or electronic signature of the individual administering the controlled substance;
- (vi) returns to the pharmacy; and
- (vii) waste (waste is required to be witnessed and cosigned, electronically or manually, by another individual).

(5) Floor stock records.

(A) Distribution records for Schedules II - V controlled substances floor stock shall include the following information:

- (i) patient's name;
- (ii) prescribing or attending practitioner;
- (iii) name of controlled substance, dosage form, and strength;
- (iv) time and date of administration to patient;
- (v) quantity administered;
- (vi) name, initials, or electronic signature of the individual administering drug;
- (vii) returns to the pharmacy; and
- (viii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(B) The record required by subparagraph (A) of this paragraph shall be maintained separately from patient records.

(C) A pharmacist shall review distribution records with medication orders on a periodic basis to verify proper usage of drugs, not to exceed 30 days between such reviews.

(6) General requirements for records maintained in a data processing system.

(A) Noncompliance with data processing requirements. If a hospital pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) Requirements for backup systems. The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and

update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(C) Change or discontinuance of a data processing system.

(i) Records of distribution and return for all controlled substances. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains the same information as required on the audit trail printout as specified in paragraph (7)(B) of this subsection. The information on this printout shall be sorted and printed by drug name and list all distributions/returns chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(D) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(7) Data processing system maintenance of records for the distribution and return of all controlled substances to the pharmacy.

(A) Each time a controlled substance is distributed from or returned to the pharmacy, a record of such distribution or return shall be entered into the data processing system.

(B) The data processing system shall have the capacity to produce a hard copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(i) patient's name and room number or patient's facility identification number;

(ii) prescribing or attending practitioner's name;

(iii) name, strength, and dosage form of the drug product actually distributed;

(iv) total quantity distributed from and returned to the pharmacy;

(v) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(I) prescribing or attending practitioner's address; and

(II) practitioner's DEA registration number, if the medication order is for a controlled substance.

(C) An audit trail printout for each strength and dosage form of the drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the facility unless the pharmacy complies with subparagraph (D) of this

paragraph. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(D) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this paragraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board, or other authorized local, state, or federal law enforcement or regulatory agencies.

(8) Failure to maintain records. Failure to provide records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(9) Data processing system downtime. In the event that a hospital pharmacy that uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for on-line data entry as soon as the system is available for use again.

(10) Ongoing clinical pharmacy program records. If a pharmacy has an ongoing clinical pharmacy program and allows pharmacy technicians to verify the accuracy of work performed by other pharmacy technicians, the pharmacy must have a record of the pharmacy technicians and the duties performed.

(d) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy or other registrant, without being registered to distribute, under the following conditions:

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance; and

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed or distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule I or II controlled substance, the following is applicable:

(A) The pharmacy, practitioner or other registrant who is receiving the controlled substances shall issue copy 1 and copy 2 of a DEA order form (DEA 222) to the distributing pharmacy; and

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222) titled TO BE FILLED IN BY SUPPLIER;

(ii) maintain copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(iii) forward copy 2 of the DEA order form (DEA 222) to the divisional office of the Drug Enforcement Administration.

(e) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes which identifies pharmacy personnel by name. The initials or identification code shall be unique to ensure that each person can be identified, i.e., identical initials or identification codes cannot be used. Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(2) copy 3 of DEA order forms (DEA 222) which have been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(3) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard copy of the perpetual inventory on-site;

(7) hard copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) a hard copy Schedule V nonprescription register book;

(9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(10) a hard copy of any notification required by the Texas Pharmacy Act or these sections including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in diagnosis or treatment of injury, illness, and disease.

(f) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of DEA as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of DEA that permission to keep central records is denied, the

pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph; and

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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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22 TAC §291.76

The Texas State Board of Pharmacy adopts amendments to §291.76, concerning Class C Pharmacies Located in a Free-standing Ambulatory Surgical Center. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1661); therefore, the rules will not be republished.

The amendments remove an outdated reference to the Department of Public Safety as one of the agencies to which reports of theft or loss of controlled substances are made and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551- 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551- 569, Texas Occupations Code.

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**SUBCHAPTER G. SERVICES PROVIDED BY
PHARMACIES**

22 TAC §291.123

The Texas State Board of Pharmacy adopts amendments to §291.123, concerning Central Prescription Drug or Medication Order Processing. These amendments are adopted with changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1670). The Board made changes to include pharmacy technician trainees in those allowed to perform certain duties remotely.

The amendments allow a pharmacy technician employee or a pharmacy technician trainee employee who is licensed in Texas to remotely access a Class A, Class C, or Class E pharmacy engaged in centralized prescription drug or medication order processing's data base in order to process prescription or medication drug orders.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.123. *Central Prescription Drug or Medication Order Processing.*

(a) Purpose.

(1) The purpose of this section is to provide standards for centralized prescription drug or medication order processing by a Class A (Community), Class C (Institutional), or Class E (Non-Resident) pharmacy.

(2) Any facility established for the purpose of processing prescription drug or medication drug orders shall be licensed as a Class A, Class C, or Class E pharmacy under the Act. However, nothing in this subsection shall prohibit an individual pharmacist employee, individual pharmacy technician employee, or individual pharmacy technician trainee employee who is licensed in Texas from remotely accessing the pharmacy's electronic data base from outside the pharmacy in order to process prescription or medication drug orders, provided the pharmacy establishes controls to protect the privacy and security of confidential records.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set out in the Act. Centralized prescription drug or medication order processing--the processing of a prescription drug

or medication orders by a Class A, Class C, or Class E pharmacy on behalf of another pharmacy, a health care provider, or a payor. Centralized prescription drug or medication order processing does not include the dispensing of a prescription drug order but includes any of the following:

- (1) receiving, interpreting, or clarifying prescription drug or medication drug orders;
 - (2) data entering and transferring of prescription drug or medication order information;
 - (3) performing drug regimen review;
 - (4) obtaining refill and substitution authorizations;
 - (5) interpreting clinical data for prior authorization for dispensing;
 - (6) performing therapeutic interventions; and
 - (7) providing drug information concerning a patient's prescription.
- (c) Operational Standards.
- (1) General requirements.

(A) A Class A, Class C, or Class E Pharmacy may outsource prescription drug or medication order processing to another Class A, Class C, or Class E pharmacy provided the pharmacies:

(i) have:

(I) the same owner; or

(II) entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations; and

(ii) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to process a non-dispensing function.

(B) A pharmacy that performs centralized prescription drug or medication order processing shall comply with the provisions applicable to the class of pharmacy contained in either §§291.31 - 291.35 of this title (relating to Definitions, Personnel, Operational Standards, Records, and Official Prescription Requirements in Class A (Community) Pharmacies), or §§291.72 - 291.75 of this title (relating to Definitions, Personnel, Operational Standards, and Records in a Class C (Institutional) Pharmacy), or §§291.102 - 291.105 of this title (relating to Definitions, Personnel, Operational Standards, and Records in a Class E (Non-Resident) Pharmacy) to the extent applicable for the specific processing activity and this section including:

(i) duties which must be performed by a pharmacist;

and

(ii) supervision requirements for pharmacy technicians and pharmacy technician trainees.

(2) Notifications to patients.

(A) A pharmacy that outsources prescription drug or medication order processing to another pharmacy shall prior to outsourcing their prescription:

(i) notify patients that prescription processing may be outsourced to another pharmacy; and

(ii) give the name of that pharmacy; or if the pharmacy is part of a network of pharmacies under common ownership and any of the network pharmacies may process the prescription, the pa-

tient shall be notified of this fact. Such notification may be provided through a one-time written notice to the patient or through use of a sign in the pharmacy.

(B) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., hospitals or nursing homes).

(3) Policy and Procedures. A policy and procedure manual as it relates to central processing shall be maintained at all pharmacies involved in central processing and be available for inspection. Each pharmacy is required to maintain only those portions of the policy and procedure manual that relate to that pharmacy's operations. The manual shall:

(A) outline the responsibilities of each of the pharmacies;

(B) include a list of the name, address, telephone numbers, and all license/registration numbers of the pharmacies involved in centralized prescription drug or medication order processing; and

(C) include policies and procedures for:

(i) protecting the confidentiality and integrity of patient information;

(ii) maintenance of appropriate records to identify the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who performed any processing;

(iii) complying with federal and state laws and regulations;

(iv) operating a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems; and

(v) annually reviewing the written policies and procedures and documenting such review.

(d) Records. All pharmacies shall maintain appropriate records which identify, by prescription drug or medication order, the name(s), initials, or identification code(s) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs a processing function for a prescription drug or medication order. Such records may be maintained:

(1) separately by each pharmacy and pharmacist; or

(2) in a common electronic file as long as the records are maintained in such a manner that the data processing system can produce a printout which lists the functions performed by each pharmacy and pharmacist.

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SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.151

The Texas State Board of Pharmacy adopts amendments to §291.151, concerning Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F). These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1671). The amended rule will not be republished.

The amendments remove an outdated reference to the Department of Public Safety as one of the agencies to which reports of theft or loss of controlled substances are made and correct grammatical errors.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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22 TAC §291.153

The Texas State Board of Pharmacy adopts amendments to §291.153, concerning Central Prescription Drug or Medication Order Processing Pharmacy (Class G). These amendments are adopted with changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1680). The Board made changes to include pharmacy technician trainees in those allowed to perform certain duties remotely. The rule will be republished.

The amendments allow a pharmacy technician employee or a pharmacy technician trainee employee who is licensed in Texas

to remotely access a Class G pharmacy's data base in order to process prescription or medication drug orders.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.153. *Central Prescription Drug or Medication Order Processing Pharmacy (Class G).*

(a) Purpose.

(1) The purpose of this section is to provide standards for a centralized prescription drug or medication order processing pharmacy.

(2) Any facility established for the primary purpose of processing prescription drug or medication drug orders shall be licensed as a Class G pharmacy under the Act. A Class G pharmacy shall not store bulk drugs, or dispense a prescription drug order. Nothing in this subsection shall prohibit an individual pharmacist employee, individual pharmacy technician employee, or individual pharmacy technician trainee employee who is licensed in Texas from remotely accessing the pharmacy's electronic data base from a location other than a licensed pharmacy in order to process prescription or medication drug orders, provided the pharmacy establishes controls to protect the privacy and security of confidential records, and the Texas-licensed pharmacist, pharmacy technician, or pharmacy technician trainee does not engage in the receiving of written prescription or medication orders or the maintenance of prescription or medication drug orders at the non-licensed remote location.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set out in the Act.

(1) Centralized prescription drug or medication order processing--The processing of a prescription drug or medication orders by a Class G pharmacy on behalf of another pharmacy, a health care provider, or a payor. Centralized prescription drug or medication order processing does not include the dispensing of a prescription drug but includes any of the following:

(A) receiving, interpreting, or clarifying prescription drug or medication drug orders;

(B) data entering and transferring of prescription drug or medication order information;

(C) performing drug regimen review;

(D) obtaining refill and substitution authorizations;

(E) verifying accurate prescription data entry;

(F) interpreting clinical data for prior authorization for dispensing;

(G) performing therapeutic interventions; and

(H) providing drug information concerning a patient's prescription.

(2) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each Class G pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy.

(B) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge may advise the owner on administrative or operational concerns. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

(i) educating and training pharmacy technicians and pharmacy technician trainees;

(ii) maintaining records of all transactions of the Class G pharmacy required by applicable state and federal laws and sections;

(iii) adhering to policies and procedures regarding the maintenance of records in a data processing system such that the data processing system is in compliance with Class G pharmacy requirements; and

(iv) legally operating the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy.

(2) Owner. The owner of a Class G pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(B) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the Class G pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities.

(iii) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for designating and delegating duties, other than those listed in subparagraph (B) of this paragraph, to pharmacy technicians and pharmacy technician trainees. Each pharmacist shall be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(iv) Pharmacists shall directly supervise pharmacy technicians and pharmacy technician trainees who are entering prescription data into the pharmacy's data processing system by one of the following methods.

(I) Physically present supervision. A pharmacist shall be physically present to directly supervise a pharmacy technician or pharmacy technician trainee who is entering prescription order or medication order data into the data processing system. Each prescription or medication order entered into the data processing system shall be verified at the time of data entry.

(II) Electronic supervision. A pharmacist may electronically supervise a pharmacy technician or pharmacy technician trainee who is entering prescription order or medication order data into the data processing system provided the pharmacist:

(-a-) the pharmacist has the ability to immediately communicate directly with the technician/trainee;

(-b-) has immediate access to any original document containing prescription or medication order information or other information related to the dispensing of the prescription or medication order. Such access may be through imaging technology provided the pharmacist has the ability to review the original, hardcopy documents if needed for clarification; and

(-c-) verifies the accuracy of the data entered information prior to the release of the information to the system for storage.

(III) Electronic verification of data entry by pharmacy technicians or pharmacy technician trainees. A pharmacist may electronically verify the data entry of prescription information into a data processing system provided:

(-a-) the pharmacist has the ability to immediately communicate directly with the technician/trainee;

(-b-) the pharmacist electronically conducting the verification is either a:

(-1-) Texas licensed pharmacist; or

(-2-) pharmacist employed by a Class E pharmacy that has the same owner as the Class G pharmacy where the pharmacy technicians/trainees are located or that has entered into a written contract or agreement with the Class G pharmacy, which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations;

(-c-) the pharmacy establishes controls to protect the privacy and security of confidential records; and

(-d-) the pharmacy keeps permanent records of prescriptions electronically verified for a period of two years.

(v) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

(i) receiving oral prescription drug or medication orders and reducing these orders to writing, either manually or electronically;

(ii) interpreting prescription drug or medication orders;

(iii) selecting drug products;

(iv) verifying the data entry of the prescription drug or medication order information at the time of data entry prior to the

release of the information to a Class A, Class C, or Class E pharmacy for dispensing;

(v) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant, as specified in §291.33(c) of this title (relating to Operational Standards);

(vi) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(vii) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and

(viii) interpreting patient medication records and performing drug regimen reviews.

(4) Pharmacy Technicians and Pharmacy Technician Trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties.

(i) Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection.

(ii) A pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(I) a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees;

(II) pharmacy technicians and pharmacy technician trainees are under the direct supervision of and responsible to a pharmacist; and

(iii) Pharmacy technicians and pharmacy technician trainees may perform only nonjudgmental technical duties associated with the preparation of prescription drugs, as follows:

(I) initiating and receiving refill authorization requests; and

(II) entering prescription or medication order data into a data processing system.

(C) Ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees. A Class G pharmacy may have a ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees of 1:8 provided:

(i) at least seven are pharmacy technicians and not pharmacy technician trainees; and

(ii) the pharmacy has written policies and procedures regarding the supervision of pharmacy technicians and pharmacy technician trainees.

(5) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician, or a certified phar-

macy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational Standards.

(1) General requirements.

(A) A Class A, Class C, or Class E Pharmacy may outsource prescription drug or medication order processing to a Class G pharmacy provided the pharmacies:

(i) have:

(I) the same owner; or

(II) entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations; and

(ii) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to perform a non-dispensing function.

(B) A Class G pharmacy shall comply with the provisions applicable to the class of pharmacy contained in either §§291.31 - 291.35 of this title (relating to Definitions, Personnel, Operational Standards, Records, and Official Prescription Requirements in Class A (Community) Pharmacies), or §§291.72 - 291.75 of this title (relating to Definitions, Personnel, Operational Standards, and Records in a Class C (Institutional) Pharmacy), or §§291.102 - 291.105 of this title (relating to Definitions, Personnel, Operational Standards, and Records in a Class E (Non-Resident) Pharmacy) to the extent applicable for the specific processing activity and this section including:

(i) duties which must be performed by a pharmacist; and

(ii) supervision requirements for pharmacy technicians and pharmacy technician trainees.

(2) Licensing requirements.

(A) A Class G pharmacy shall register with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(B) A Class G pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(C) A Class G pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) A Class G pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in

writing of the names of the new managing officers within 10 days of the change, following the procedures in §291.3 of this title.

(E) A Class G pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(F) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance and renewal of a license and the issuance of an amended license.

(G) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(3) Environment.

(A) General requirements.

(i) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition.

(ii) The pharmacy shall be properly lighted and ventilated.

(B) Security.

(i) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drug records.

(ii) Pharmacies shall employ appropriate measures to ensure that security of prescription drug records is maintained at all times to prohibit unauthorized access.

(4) Policy and Procedures. A policy and procedure manual shall be maintained by the Class G pharmacy and be available for inspection. The manual shall:

(A) outline the responsibilities of each of the pharmacies;

(B) include a list of the name, address, telephone numbers, and all license/registration numbers of the pharmacies involved in centralized prescription drug or medication order processing; and

(C) include policies and procedures for:

(i) protecting the confidentiality and integrity of patient information;

(ii) maintaining appropriate records to identify the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who performed any processing;

(iii) complying with federal and state laws and regulations;

(iv) operating a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems; and

(v) annually reviewing the written policies and procedures and documenting such review.

(e) Records.

(1) every record required to be kept under the provisions of this section shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) The pharmacy shall maintain appropriate records which identify, by prescription drug or medication order, the name(s), initials, or identification code(s) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs a processing function for a prescription drug or medication order. Such records may be maintained:

(A) separately by each pharmacy and pharmacist; or

(B) in a common electronic file as long as the records are maintained in such a manner that the data processing system can produce a printout which lists the functions performed by each pharmacy and pharmacist.

(3) In addition, the pharmacy shall comply with the record keeping requirements applicable to the class of pharmacy to the extent applicable for the specific processing activity and this section.

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

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Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



CHAPTER 295. PHARMACISTS

22 TAC §295.1

The Texas State Board of Pharmacy adopts amendments to §295.1, concerning Change of Address and/or Name. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1682).

The amendments update the change of address or name requirements for pharmacists to reflect the board's new procedure of issuing electronic renewal certificates.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board inter-

prets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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22 TAC §295.5

The Texas State Board of Pharmacy adopts amendments to §295.5, concerning Pharmacist License or Renewal Fees. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1683). The rule will not be republished.

The amendments remove the fees for duplicate or amended renewal certificates to reflect the board's new procedure of issuing electronic renewal certificates and correct a subsection reference.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.4

The Texas State Board of Pharmacy adopts amendments to §297.4, concerning Fees. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1684).

The amendments remove the fees for duplicate or amended certificates to reflect the board's new procedure of issuing electronic renewal certificates.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.2

The Texas State Board of Pharmacy adopts amendments to §315.2, concerning Official Prescription Form. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1685).

The amendments remove the effective date from the short title and remove language pertaining to the validity of official prescription forms previously issued by the Texas Department of Public Safety.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551- 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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22 TAC §315.15

The Texas State Board of Pharmacy adopts amendments to §315.15, concerning Access Requirements. These amendments are adopted without changes to the proposed text as published in the April 5, 2019, issue of the *Texas Register* (44 TexReg 1685).

The amendments clarify which pharmacist is responsible for the review of the Texas Prescription Monitoring Program database prior to dispensing an opioid, benzodiazepine, barbiturate, or carisoprodol.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §9.34

The Texas Department of Transportation (department) adopts amendments to §9.34, concerning Comprehensive Process. The comprehensive process is used in reviewing administrative qualification information and negotiating contracts that require a registered architect, engineer, or professional land surveyor in accordance with Transportation Code, §223.041. The amendments to §9.34 are adopted with changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 694) and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The purpose of these changes is to clarify the requirements for certain allowable costs and to streamline the process used by the department in reviewing administrative qualification information and negotiating contracts that require a registered architect, engineer, or professional land surveyor. The amendments clarify that bonuses and incentive compensation are allowable provided that the awards follow a written bonus plan and documented performance review. The amendment moves the requirement to submit actual salary rate information for employees to be a part of the annual administrative qualification information submittal. This would allow annual rate negotiations, thus streamlining the contract negotiation process. Additionally, the amendment adds the option to extend a firm's indirect cost rate for 90 days past the expiration date, provided the department has received the firm's annual administrative qualifications information package prior to the expiration date. This would allow the department to select, negotiate, and contract with a firm whose indirect cost rate has expired while in the midst of its annual administrative qualification review process, instead of dropping the firm from contract consideration. Finally, the amendment clarifies that the indirect cost rate in effect at the time negotiations commence will be used in negotiations.

Amendments to §9.34(b)(2)(B) add an option to extend the use of an approved indirect cost rate for 90 days beyond the termination date, to allow the department to select and contract with the firm while its annual administrative qualification information package is under evaluation by the department. This provides the department with flexibility to complete the selection and contracting process, bridging the gap between the date that an approved indirect cost rate is scheduled to expire and the date that the new indirect cost rate, for which filed financial information supporting the rate is under review, is adopted.

Amendments to §9.34(b)(2) add new subparagraphs (D) and (E). New subparagraph (D) clarifies that bonuses and incentive compensation are allowable provided that a written bonus plan or documented performance review is followed. The award must be supported by a performance review based on measurable criteria and the written bonus plan must include components from the AASHTO Audit Guide and governing Federal Acquisition Regulations.

New subparagraph (E) requires firms to submit actual salary rates for employees as part of the administrative qualification information package. The rates will be evaluated for reasonableness and, if approved, will be used for the next 12-month period in negotiations for newly awarded contracts. This streamlines the rate negotiation process to a single annual negotiation with a firm instead of multiple negotiations throughout the year.

The subsequent subparagraphs of §9.34(b)(2) are appropriately redesignated.

Amendments to §9.34(b)(5) clarify when an indirect cost rate is effective for use in negotiations, which is at the time negotiations commence.

Amendments to §9.34(b)(6) clarify that the actual salary rate information provided during the administrative qualification review will not be provided to the negotiator or selection team before the selection of a firm.

COMMENTS

Comments concerning §9.34 were received. The American Council of Engineering Companies of Texas (ACEC), Jacobs, and Pape-Dawson Engineers submitted comments. All three commenters supported the adoption of the rule change; two provided comments on specific sections of the rule.

Comment: Both ACEC and Pape-Dawson Engineers commented that to comply with the law, the Professional Services Procurement Act, information submitted in the revised administrative qualification process should be appropriately firewalled from the selection process and any inappropriate release or disclosure of this information by department employees should be subject to severe sanction.

Response: The proposed amendment to subsection 9.34(b)(6) provides that in addition to the indirect cost rate, the salary information will not be shared with the department's staff conducting negotiations or the selection team before selection. Additionally, the department has added a new paragraph 9.34(b)(2)(H) related to the confidentiality of cost data. The department has policies in place to discipline employees who do not adhere to department rules and policies.

Comment: Both ACEC and Pape-Dawson Engineers commented regarding proposed subsection 9.34(b)(2)(D) that some requirement for written bonus plans is appropriate, but the proposed language goes beyond what is required in the AASHTO Audit Guide and seems likely to lead to audit traps. They both requested clarification in the proposed rules.

Response: The department has amended the language to more closely mirror the AASHTO Uniform Audit and Accounting Guide.

Comment: Both ACEC and Pape-Dawson Engineers commented that there is a concern regarding the privacy and protection of the cost data from public release. Both requested that the department include in the rules a statement that information is not subject to public disclosure.

Response: The department has added a new paragraph 9.34(b)(2)(H) related to the confidentiality of cost data.

Comment: ACEC commented that there is a concern that salary rate information submitted during the administrative qualifications process, if not approved, would delay a firm from being administratively qualified.

Response: Although the salary information may be submitted with the annual administrative qualification information, the annual approval of salary rate information is a separate approval process. Section 9.34(b)(1) clearly states that administrative qualification is a process used by the department to verify that a provider performing engineering and design related services has an indirect cost rate that meets department requirements. A firm may still compete even if it does not have annual salary rates approved. No change was made.

Comment: ACEC commented that the department should consider making the annual salary rate approval process voluntary,

at least initially, so a contract-by-contract approach could be used.

Response: The department has added language to 9.34(b)(2)(E) clarifying that the department may negotiate rates on contract-by-contract basis when annual rate information is not available. This will address negotiations during the initial implementation period, as well as for new firms entering the program.

Comment: ACEC commented that the language in paragraph 9.34(b)(2)(E) that states, "rates may be used if reasonable and accepted by TxDOT" is problematic. The rules should clarify what the standard is for the department's review of rates.

Response: Through the annual submission of the salary rate data from the firms that participate in the department's architectural, engineering, and surveying services contracting program, the department will have a resource for determining the norms within this industry. To clarify the department's standard of review, language was added to paragraph 9.34(b)(2)(E) indicating that the department will review salary rates for consistency with industry norms as well as reasonableness.

Comment: ACEC commented that salary rates and market rates change from year to year, yet not all of the department's multi-year contracts incorporate escalation into the contracts. ACEC encouraged the department to (1) utilize the rates entered into each year on the work authorizations entered into each year and (2) provide that multi-year specific deliverable contracts will be adjusted over time on annually negotiated contracts.

Response: When negotiating contracts, the department must have certainty in budgeting on projects. The introduction of annual rate changes on existing contracts would not permit the department to budget a project with certainty. Additionally, such rate changes would necessitate a contract amendment to implement, adding an administrative burden on both the department and firms, negating any efficiencies gained by the annual negotiation process. Additionally, the Texas Constitution Article 3 Section 44 would prohibit extra compensation for a service once a contract had been entered into, for the performance of the same service. The department addresses escalation on long term contracts during initial contract negotiations or when contracts are amended to increase the duration or the services to be performed. No change was made.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

§9.34. *Comprehensive Process.*

(a) *Applicability.* The comprehensive process described under this section must be used for any specific deliverable contract that is \$1

million or more in value and is not subject to §9.35 of this subchapter (relating to Federal Process).

(b) Administrative qualification.

(1) Administrative qualification is a process used by the department to verify that a provider performing engineering and design related services has an indirect cost rate that meets department requirements. Except as provided by paragraph (8) of this subsection, to compete for a contract under this section a provider performing engineering and design related services either must be administratively qualified or must accept an indirect cost rate under paragraph (7) of this subsection.

(2) Factors in determining administrative qualification.

(A) A provider may demonstrate administrative qualification by an audit or by self-certification.

(i) An audit may be performed by an independent certified public accountant (CPA), an agency of the federal government, another state transportation agency, or a local transit agency. An audit performed by an independent CPA must be conducted in accordance with the current versions of 48 C.F.R. Part 31, the Generally Accepted Government Auditing Standards (GAGAS), and the American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide. The provider must provide the department with unrestricted access to the audit work papers, records, and other information as requested by the department.

(ii) Self-certification may be conducted by the provider and must include a cost report and an internal controls report. The self-certified cost report must comply with the current versions of 48 C.F.R. Part 31, the GAGAS, and the AASHTO Uniform Audit and Accounting Guide. The self-certified internal control report must certify the provider has internal controls in place within its organization. Both the cost report and the internal control report must be signed by a company officer and notarized.

(B) The audit or self-certification shall be based on the provider's fiscal year. The indirect cost rate, as approved by the department, shall become effective six months after the end of the provider's fiscal year, or immediately if filed more than six months after the end of the provider's fiscal year. It shall be effective no more than twelve months and shall expire eighteen months after the end of the fiscal year upon which it is based, except that, for the purpose of competition referred to in paragraph (1) of this subsection, negotiations referred to in subsection (b)(5) of this section, or administratively qualified under §9.35(b) of this subchapter (relating to Federal Process), the department may extend an approved indirect cost rate for 90 days if the department has received the provider's annual administrative qualifications information submittal before the rate's expiration date.

(C) A provider must submit on an annual basis:

(i) a cognizant letter of concurrence issued by a state transportation agency in accordance with the AASHTO Uniform Audit and Accounting Guide; or

(ii) a compensation analysis for all executives and employees in accordance with the AASHTO Uniform Audit and Accounting Guide for which the provider may use either the National Compensation Matrix or surveys as prescribed in the AASHTO Uniform Audit and Accounting Guide.

(D) A provider's payment of a bonus or incentive compensation to an employee is allowable only if the bonus or compensation is paid under a written bonus plan that:

(i) is consistent with the AASHTO Uniform Audit and Accounting Guide that identifies eligibility requirements and provides details regarding how bonus payments are determined; and

(ii) includes an adequate description of the performance measures used to determine bonus amounts, such as employee performance evaluation ratings, contributions toward the firm's revenue growth, and responsibilities for cost containment.

(E) A provider must submit on an annual basis the salary rates for employees that it anticipates using on contracts that may be executed during the next 12-month period. The department will review the salary rates for reasonableness and consistency with industry norms and when approved, will apply the rates to contracts negotiated within the next 12-month period. During the 12-month period, the provider must submit the salary rate for any employee who is used on a contract and whose salary rate has not been provided under this subparagraph. The department will continue to negotiate contracts on an individual basis during the initial 12-month implementation period.

(F) The department may audit the indirect cost rate of a provider under contract with, or seeking to do business with, the department. These audits will be conducted in accordance with the criteria outlined in this subsection.

(G) A provider must submit a signed Certification of Final Indirect Costs with the audit report or self-certification. The certification must follow the requirements of the Federal Highway Administration.

(H) The department will treat the cost data as confidential pursuant to 23 U.S.C. Section 112 and 23 C.F.R. Part 172.

(3) Submittal and review process for administrative qualification.

(A) A provider must submit its administrative qualification information to the department in accordance with the instructions on the department's website.

(B) Upon review of an audit report or self-certification received from a provider, the department may request additional information from the provider. If the submittal is not complete and accurate, the department will return it to the provider for correction. The provider shall submit the additional information or the corrected administrative qualification submittal within 30 days after the day that it receives the department's request. If the information is not received within the 30-day period, the department will reject and not process the administrative qualification submittal.

(C) If an administrative qualification submittal is rejected under subparagraph (B) of this paragraph, the provider may refile a corrected audit report or self-certification and shall include any previously requested information. The provider may not refile earlier than 90 days after the day that the department sends the notice rejecting the submittal.

(D) The department will make a good faith effort to complete the administrative qualification review process within 60 days after the day that it receives a complete and accurate audit report or self-certification.

(4) Administrative qualification is applicable only to the incorporated business entity upon which the indirect cost rate is based and does not extend to a subsidiary, affiliate, or parent of the incorporated entity, except as provided by this paragraph. A corporation may administratively qualify a business segment of the corporation if the business segment is not limited to a geographical area that is less than the entire state of Texas and if the corporation is able to demonstrate

and justify the allocation of costs between the business segment and other corporate operations. If a corporate business segment is administratively qualified, the resulting indirect cost rate is not applicable to staff not employed by the business segment.

(5) In negotiations under §9.40 of this subchapter (relating to Negotiations), the department will use the selected firm's indirect cost rate information that is in effect at that time the negotiations begin.

(6) The department will not provide a firm's administrative qualification information, including salary information, to the department's staff conducting negotiations or the consultant selection team before the selection of that firm.

(7) Providers not administratively qualified. The department may contract with a prime provider or allow the use of a sub-provider that is not administratively qualified if:

(A) the provider has been in operation, as currently organized, for less than one fiscal year and the provider accepts an indirect cost rate developed by the department; or

(B) on request by the department during the selection process, the prime provider provides written certification that the prime provider or sub-provider, as applicable, does not have an indirect cost rate audit and will accept an indirect cost rate developed by the department.

(8) Exemptions to administrative qualification.

(A) A non-engineering firm is exempt from the administrative qualification requirement of this section.

(B) A provider performing a service under standard work category 18.2.1, subsurface utilities engineering, or any of the following work groups, as listed on the department's precertification website, is exempted from administrative qualification, to the extent of the service being performed:

- (i) Group 6, bridge inspection;
- (ii) Group 12, materials inspection and testing;
- (iii) Group 14, geotechnical services;
- (iv) Group 15, surveying and mapping; and
- (v) Group 16, architecture.

(C) The department may exempt services other than those indicated in subparagraph (B) of this paragraph on a case-by-case basis. Any request for an exemption must be received by the department by the closing date of the solicitation.

(c) Consultant selection team (CST).

(1) The department shall use a CST in selecting providers under this section.

(2) The CST shall be composed of at least three department employees.

(3) At least one CST member must be a professional engineer, for engineering contracts; a registered architect, for architectural contracts; and either a professional engineer or registered professional land surveyor, for surveying contracts.

(4) If a CST member leaves the CST during the selection process, the process may continue with the remaining members, subject to paragraph (3) of this subsection.

(d) Request for qualifications (RFQ). Not fewer than 14 calendar days before the solicitation closing date, the department will post on a web-based bulletin board an RFQ providing the contract infor-

mation and specifying the requirements for preparing and submitting a statement of qualification.

(e) Statement of qualification (SOQ). To be considered, an SOQ must comply with the requirements specified in the RFQ.

(f) Replacements.

(1) An individual may be proposed as a replacement for the prime provider project manager prior to the department's notification of firms short-listed for an interview or, if an interview is not required, prior to selection.

(2) An individual may be proposed as a replacement for a task leader prior to contract execution.

(3) A proposed replacement for the prime provider project manager must be an employee of the prime provider. A proposed replacement for a task leader must be an employee of the prime provider or its subprovider. A proposed replacement for either position must satisfy the applicable precertification and non-listed category requirements.

(g) SOQ screening and evaluation.

(1) The department may disqualify an SOQ if the department has knowledge that a firm on the project team or an employee of a firm on the project team is the subject of a final administrative or judicial determination that the firm or employee has violated a statute or rule of a state licensing entity related to occupational or professional conduct.

(2) If an SOQ is not disqualified under paragraph (1) of this subsection, the CST will screen the SOQ to determine whether it complies with the requirements specified in the RFQ. Each SOQ that meets these requirements will be considered responsive to the RFQ and evaluated.

(3) The CST will evaluate the responsive SOQ according to the evaluation criteria detailed in the RFQ based on factors the department has identified as most likely to result in the selection of the most qualified provider.

(h) Short list. The short list will consist of the most qualified providers, as indicated by the SOQ scores.

(1) For single contract selections, the minimum number of short-listed prime providers is three, unless fewer than three prime providers submitted a responsive SOQ.

(2) For multiple contract selections, the minimum number of short-listed prime providers is the number of desired contracts plus three, unless fewer than the desired number of prime providers submitted a responsive SOQ.

(3) Notification.

(A) The department will notify each prime provider that submitted an SOQ whether it was short-listed.

(B) The department will notify each short-listed prime provider whether a short list meeting will be held.

(i) Short list evaluation.

(1) Interviews. The department will evaluate the short-listed providers through interviews. The department will issue an Interview and Contract Guide (ICG) to each short-listed prime provider. The ICG will provide contract information and specify the requirements for the interview.

(2) Short list evaluation criteria. The CST will evaluate the interviews according to the criteria specified in the ICG, including the prime provider's past performance scores in the Consultant Certification Information System database reflecting less than satisfactory performance.

(j) Selection.

(1) Basis of final selection. The CST will select the best qualified provider, as indicated by the short list scores.

(2) Tie scores. The PEPS Division Director will break a tie using the following method.

(A) The first tie breaker will be the scores for the interview criterion with the highest RIF.

(B) The remaining interview criteria shall be compared in the order of decreasing RIF until the tie is broken.

(C) If the providers have identical scores on all of the interview criteria, the provider will be chosen by random selection.

(3) Notification. The department will:

(A) provide written notification to the prime provider selected for contract negotiation and arrange a meeting to begin contract negotiations;

(B) provide written notification to each short-listed prime provider that was not selected, notifying the provider of the non-selection; and

(C) publish the short list and the selected provider on a web-based bulletin board.

(4) Appeal. A provider may file a written appeal concerning the selection process with the executive director or the executive director's designee as provided under §9.7 of this chapter (relating to Protest of Contract Practices or 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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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of Family and Protective Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of Family and Protective Services (DFPS) transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201, §531.02011 and §531.02013. The DFPS rules in Texas Administrative Code, Title 40, Part 19, Chapter 745, Licensing, that are related to these transferred functions are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 745, Licensing. All rules in Chapter 745 are transferring except for Subchapter K, Inspections and Investigations, and Subchapter M, Administrative Reviews and Due Process Hearings, which will remain in Title 40, Part 19, Chapter 745.

The rules will be transferred in the Texas Administrative Code effective July 15, 2019.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 745

TRD-201901645

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of Family and Protective Services (DFPS) transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201, §531.02011 and §531.02013. The DFPS rules in Texas Administrative Code, Title 40, Part 19, Chapter 745, Licensing, that are related to these transferred functions are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 745, Licensing. All rules in Chapter 745 are transferring except for Subchapter K, Inspections and Investigations, and Subchapter M, Administrative Reviews and Due Process Hearings, which will remain in Title 40, Part 19, Chapter 745.

The rules will be transferred in the Texas Administrative Code effective July 15, 2019.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 745

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Figure: 40 TAC Chapter 745

Current Rules Title 40. Social Services and Assistance Part 19. Department of Family and Protective Services Chapter 745. Licensing	Move to Title 26. Health and Human Services Part 1. Texas Health and Human Services Commission Chapter 745. Licensing
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§745.11 What words must I know to understand this chapter?	§745.11 What words must I know to understand this chapter?
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§745.33 What is child day care?	§745.33 What is child day care?
§745.35 What is residential child care?	§745.35 What is residential child care?
§745.37 What specific types of operations does Licensing regulate?	§745.37 What specific types of operations does Licensing regulate?
§745.39 Does Licensing regulate state agencies that run child-care operations?	§745.39 Does Licensing regulate state agencies that run child-care operations?
§745.41 How do I start a child day care or residential child-care operation, including a child-placing agency?	§745.41 How do I start a child day care or residential child-care operation, including a child-placing agency?
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Division 2. Exemptions from Regulation	Division 2. Exemptions from Regulation
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§745.115 What programs regulated by other governmental entities are exempt from Licensing regulation?	§745.115 What programs regulated by other governmental entities are exempt from Licensing regulation?

§745.117 Which programs of limited duration are exempt from Licensing regulation?	§745.117 Which programs of limited duration are exempt from Licensing regulation?
§745.119 What educational facilities are exempt from Licensing regulation?	§745.119 What educational facilities are exempt from Licensing regulation?
§745.121 What if my educational facility meets every criterion for an education exemption, except some of the children in care are younger than the exemption allows?	§745.121 What if my educational facility meets every criterion for an education exemption, except some of the children in care are younger than the exemption allows?
§745.123 What if my educational facility meets every criterion for an education exemption, except some of the children in care stay in care longer than the number of hours the exemption allows?	§745.123 What if my educational facility meets every criterion for an education exemption, except some of the children in care stay in care longer than the number of hours the exemption allows?
§745.125 Are additional exemption criteria required for an educational facility that provides residential child care?	§745.125 Are additional exemption criteria required for an educational facility that provides residential child care?
§745.127 What does an accrediting organization need to submit to Licensing to determine exemption from regulation for its educational facilities under §745.119(4) of this title (relating to What educational facilities are exempt from Licensing regulation?)?	§745.127 What does an accrediting organization need to submit to Licensing to determine exemption from regulation for its educational facilities under §745.119(4) of this title (relating to What educational facilities are exempt from Licensing regulation?)?
§745.129 What miscellaneous programs are exempt from Licensing regulation?	§745.129 What miscellaneous programs are exempt from Licensing regulation?
§745.131 How do I request an exemption?	§745.131 How do I request an exemption?
§745.133 When will I know if my program is exempt?	§745.133 When will I know if my program is exempt?
§745.135 What if Licensing determines that my program does not meet the exemption criteria outlined in this subchapter?	§745.135 What if Licensing determines that my program does not meet the exemption criteria outlined in this subchapter?
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§745.141 In what circumstances may I apply for a permit even though my program is exempt?	§745.141 In what circumstances may I apply for a permit even though my program is exempt?
§745.143 If my program is exempt and does not need regulation for funding purposes, can I still obtain a permit from Licensing?	§745.143 If my program is exempt and does not need regulation for funding purposes, can I still obtain a permit from Licensing?
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§745.201 What words must I know to understand this subchapter?	§745.201 What words must I know to understand this subchapter?

Subchapter D. Application Process	Subchapter D. Application Process
Division 2. Stages of the Application Process and Pre-Application Interview	Division 2. Stages of the Application Process and Pre-Application Interview
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§745.213 What is the purpose of the pre-application interview?	§745.213 What is the purpose of the pre-application interview?
§745.215 How does Licensing conduct the pre-application interview?	§745.215 How does Licensing conduct the pre-application interview?
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§745.243 What does a completed application for a permit include?	§745.243 What does a completed application for a permit include?
§745.245 How do I demonstrate that the governing body is not delinquent in paying the franchise tax?	§745.245 How do I demonstrate that the governing body is not delinquent in paying the franchise tax?
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§745.249 What insurance coverage must I have for my licensed operation?	§745.249 What insurance coverage must I have for my licensed operation?
§745.251 What are acceptable reasons for not obtaining liability insurance?	§745.251 What are acceptable reasons for not obtaining liability insurance?
§745.253 How does not obtaining liability insurance affect my application for a permit?	§745.253 How does not obtaining liability insurance affect my application for a permit?
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§745.273 Which residential child-care operations must meet the public notice and hearing requirements?	§745.273 Which residential child-care operations must meet the public notice and hearing requirements?
§745.275 What are the specific requirements for a public notice and hearing?	§745.275 What are the specific requirements for a public notice and hearing?
§745.277 What will happen if I fail to comply with the public notice and hearing requirements?	§745.277 What will happen if I fail to comply with the public notice and hearing requirements?
§745.279 How may the results of a public hearing affect my application for a permit or a request to amend my permit?	§745.279 How may the results of a public hearing affect my application for a permit or a request to amend my permit?
Subchapter D. Application Process	Subchapter D. Application Process
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§745.301 How long does Licensing have to review my application and let me know my application status?	§745.301 How long does Licensing have to review my application and let me know my application status?
§745.303 How many chances do I have to submit all of the required information?	§745.303 How many chances do I have to submit all of the required information?
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§745.321 What will Licensing do after accepting my application?	§745.321 What will Licensing do after accepting my application?
§745.323 What if Licensing exceeds its timeframes for processing my application?	§745.323 What if Licensing exceeds its timeframes for processing my application?
§745.325 How do I file a complaint?	§745.325 How do I file a complaint?
§745.327 When does Licensing have good cause for exceeding its timeframes for processing my application?	§745.327 When does Licensing have good cause for exceeding its timeframes for processing my application?
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§745.341 What type of permit will Licensing issue me if I qualify for a permit after my application is accepted?	§745.341 What type of permit will Licensing issue me if I qualify for a permit after my application is accepted?
§745.343 What is the difference between an initial license and full license?	§745.343 What is the difference between an initial license and full license?
§745.345 When does Licensing issue an initial license?	§745.345 When does Licensing issue an initial license?
§745.347 How long is an initial license valid?	§745.347 How long is an initial license valid?
§745.349 What if I am not able to care for children during the initial period?	§745.349 What if I am not able to care for children during the initial period?
§745.351 If I have an initial license, when will I be eligible for a full license?	§745.351 If I have an initial license, when will I be eligible for a full license?
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§745.373 May I have more than one licensed child-care home?	§745.373 May I have more than one licensed child-care home?
§745.375 May I offer child day care at my agency foster home or independent foster home?	§745.375 May I offer child day care at my agency foster home or independent foster home?

§745.379 Can a single operation have more than one child day-care license at the same location?	§745.379 Can a single operation have more than one child day-care license at the same location?
§745.381 Do I need Licensing's permission for my child day-care operation to provide occasional overnight care?	§745.381 Do I need Licensing's permission for my child day-care operation to provide occasional overnight care?
§745.383 Can a licensed or registered child day-care operation offer 24-hour care?	§745.383 Can a licensed or registered child day-care operation offer 24-hour care?
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§745.405 Can I operate after I apply for a permit?	§745.405 Can I operate after I apply for a permit?
§745.407 What fees must I pay when I apply for another permit after Licensing revokes my permit?	§745.407 What fees must I pay when I apply for another permit after Licensing revokes my permit?
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§745.431 What must I do if I relocate my family home after I receive my listing?	§745.431 What must I do if I relocate my family home after I receive my listing?
§745.433 What must I do if I relocate my registered child-care home after I receive my registration?	§745.433 What must I do if I relocate my registered child-care home after I receive my registration?
§745.435 What must I do if I relocate my operation after I receive my license or certification?	§745.435 What must I do if I relocate my operation after I receive my license or certification?
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§745.439 What must I do if the ownership of my employer-based child care operation or shelter care operation changes?	§745.439 What must I do if the ownership of my employer-based child care operation or shelter care operation changes?
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§745.464 What are my responsibilities regarding criminal background check requirements?	§745.464 What are my responsibilities regarding criminal background check requirements?
§745.465 When must my employer-based child care report a serious incident to Licensing?	§745.465 When must my employer-based child care report a serious incident to Licensing?
§745.467 What are my responsibilities regarding the report of abuse, neglect, or exploitation?	§745.467 What are my responsibilities regarding the report of abuse, neglect, or exploitation?
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§745.479 Will I need to post the written notice of my permit's renewal?	§745.479 Will I need to post the written notice of my permit's renewal?
§745.481 When does my permit expire?	§745.481 When does my permit expire?
§745.483 What must I do if my permit expired?	§745.483 What must I do if my permit expired?
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§745.511 Must I pay fees for more than one license if I have separate licenses for different types of operations?	§745.511 Must I pay fees for more than one license if I have separate licenses for different types of operations?
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§745.609 What types of background checks are required for persons at my operation?	§745.609 What types of background checks are required for persons at my operation?
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§745.9151 What are my rights if I disagree with Licensing imposing probation on my organization?	§745.9151 What are my rights if I disagree with Licensing imposing probation on my organization?
§745.9153 What happens at the end of the probation period?	§745.9153 What happens at the end of the probation period?
§745.9155 Does Licensing charge fees for the application, recognition approval, and renewal process?	§745.9155 Does Licensing charge fees for the application, recognition approval, and renewal process?
§745.9157 If I currently hold a Certificate of Recognition, when will I have to meet the criteria specified in this subchapter?	§745.9157 If I currently hold a Certificate of Recognition, when will I have to meet the criteria specified in this subchapter?
§745.9159 What if my application materials do not comply within this period?	§745.9159 What if my application materials do not comply within this period?
§745.9161 How many chances do I have to submit all of the required information?	§745.9161 How many chances do I have to submit all of the required information?

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (TSLAC) readopts the rules in Chapter 2 of the Texas Administrative Code, Title 13, relating to General Policies and Procedures, as a result of reviewing the rules under Texas Government Code §2001.039.

The Commission reviewed the following rules:

SUBCHAPTER A: PRINCIPLES AND PROCEDURES OF THE COMMISSION

§2.1 Definitions

§2.2 Responsibilities of Commission and the Director and Librarian

§2.3 Procedures of the Commission

§2.4 Principles

§2.6 Sunset Dates for Advisory Committees

§2.7 Library Systems Act Advisory Board

§2.8 Texas Historical Records Advisory Board

§2.10 Dual Office Holding

§2.11 Merit Selection Principles

§2.12 Sick Leave Pool

§2.40 Alternative Dispute Resolution

§2.42 Negotiation and Mediation of Certain Contract Disputes

§2.46 Negotiated Rulemaking

§2.48 Petition for Adoption of Rule Changes

§2.51 Public Record Fees

§2.52 Customer Service Policies

§2.53 Service Complaints

§2.54 Bid Procedures and HUB Program

§2.55 Protest Procedure

§2.56 Training and Education of Staff

§2.57 Petition for the Adoption of a Rule

§2.58 Use of Technology

§2.59 Loan and Exhibition of State Archives

§2.60 Friends Groups

§2.61 Private Donors

§2.70 Vehicle Fleet Management

§2.75 Contract Monitoring

SUBCHAPTER C: GRANT POLICIES

DIVISION 1: GENERAL GRANT GUIDELINES

§2.110 Scope of Subchapter

§2.111 General Selection Criteria

§2.112 Eligible and Ineligible Expenses

§2.113 Peer Review

§2.114 Funding Decisions

§2.115 Awarding of Grants

§2.116 Uniform Grants Management Standards (UGMS)

§2.117 Grant Review and Award Process

§2.118 Decision Making Process

§2.119 Multiple Applications

DIVISION 2: NEGOTIATED GRANTS

§2.210 Negotiated Grants

§2.211 Resource Sharing--Interlibrary Loan Grants

§2.212 Technical Assistance Grants

§2.213 System Integrated Negotiated Grants

DIVISION 3: LIBRARY SERVICES AND TECHNOLOGY ACT, LIBRARY COOPERATION GRANTS

§2.310 Goals and Purposes

§2.311 Eligible Applicants

§2.312 Criteria for Award

DIVISION 4: LIBRARY SERVICES AND TECHNOLOGY ACT, SPECIAL PROJECTS GRANTS

§2.410 Goals and Purposes

§2.411 Eligible Applicants

§2.412 Criteria for Award

DIVISION 5: LIBRARY SERVICES AND TECHNOLOGY ACT, TEXTRESURES GRANTS

§2.510 Goals and Purposes

§2.511 Eligible Applicants

§2.512 Criteria for Award

DIVISION 6: LIBRARY SERVICES AND TECHNOLOGY ACT,
GUIDELINES FOR LIBRARY SYSTEMS

§2.610 Goals and Purposes

§2.611 Eligible Applicants

§2.612 Criteria for Award

DIVISION 7: TEXAS READS GRANTS, GUIDELINES FOR PUB-
LIC LIBRARIES

§2.710 Goals and Purposes

§2.711 Eligible Applicants

§2.712 Criteria for Award

DIVISION 8: LOAN STAR LIBRARIES GRANT PROGRAM,
GUIDELINES FOR PUBLIC LIBRARIES

§2.810 Goals and Purposes

§2.811 Definitions

§2.812 Eligible Applicants

§2.813 Eligible Expenses

§2.814 Funding Formula

§2.815 Application Review and Awarding Process

DIVISION 9: IMPACT GRANTS FOR LIBRARY INNOVATION
AND IMPROVEMENT

§2.910 Goals and Purposes

§2.911 Eligible Applicants

§2.912 Criteria for Award

The Commission has reviewed 13 Texas Administrative Code Chap-
ter 2 and determined that the reasons for initially adopting these rules
continue to exist.

No comments were received regarding this rule review.

The reviewed rules were readopted pursuant to the Commission's au-
thority under Texas Government Code §2001.039, which requires a
state agency to review rules every four years to either readopt, read-
opt with amendments, or repeal.

TRD-201901685

Donna Osborne

Director

Texas State Library and Archives Commission

Filed: June 4, 2019



TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §11.41(a)

TEXAS OFFICE OF PRODUCE SAFETY VIOLATION AND PENALTY MATRIX

Violation	First Occurrence	Second Occurrence	Subsequent Occurrence(s)
Non-Compliant, Does not pose a risk to public health	Written warning; must submit corrective action plan; and follow up within 2 weeks.	\$500 penalty; must submit corrective action plan; and follow up within 1 week.	\$1,000 penalty; must submit corrective action; and follow up within 1 day.
Non-Compliant, Potential public health risk, corrected immediately during inspection.	Written warning; must submit corrective action plan; follow up within 2 weeks.	\$750 penalty; must submit corrective action plan; and follow up within 1 week.	\$1,500 penalty; must submit corrective action plan; and follow up within 1 day.
Non-Compliant, Poses risk to public health. Not corrected on site	Written warning; must submit corrective action plan; and follow up visit within 2 days.	\$1,000 penalty; must submit corrective action plan; and follow up visit within 1 day.	\$2,000 penalty; must submit corrective action plan; Stop Sale Order; and follow up visit within 1 day.
Non-Compliant, Egregious condition	Stop Sale Order; must submit corrective action plan; and follow up visit within 1 day.	Stop Sale Order; \$2,500 penalty per day; must submit corrective action plan; and follow up visit within 1 day.	Stop Sale Order; \$5,000 penalty per day; must submit corrective action plan; and follow up visit within 1 day.
Violation of Stop Sale Order	\$1,500 penalty per day and follow up visit within 1 day.	\$2,500 penalty per day and follow up visit within 1 day.	\$5,000 penalty per day and follow up visit within 1 day.
Failure to allow inspection as authorized by Texas Agriculture Code §91.009.	\$500 penalty per day and follow up visit within 1 day.	\$1,000 penalty per day and follow up visit within 1 day.	\$1,500 penalty per day; Stop Sale Order; and follow up visit within 1 day.

1. "Respondent" means a person who is alleged to have or has committed one or more violations.
2. "Inspection" means an initial or follow up visit for the purpose of inspecting covered produce, processing of RAC, a covered farm, or records related to the Produce Safety Rule.
3. "Non-compliant" means a finding of a single violation during an inspection. Multiple findings of the same violation during one inspection are considered instances and are not multiple occurrences and may be subject to multiple penalties.
4. "Occurrence" means a violation which occurs during an inspection.
5. "Violation" means a finding made during an initial or follow-up inspection. There may be multiple violations found during one inspection. A violation occurs on the date the respondent failed to comply with the law, including a department order, or if that date is uncertain the first date on which the violation was discovered by the department.

Figure: 34 TAC §29.71(a)

Teacher Retirement System of Texas
Partial Lump Sum Factors

Age	Monthly Factor	Percentage of Standard Annuity *		
		12 Months	24 Months	36 Months
20	169.2132	92.91	85.82	78.73
21	169.0686	92.90	85.80	78.71
22	168.9148	92.90	85.79	78.69
23	168.7509	92.89	85.78	78.67
24	168.5755	92.88	85.76	78.64
25	168.3870	92.87	85.75	78.62
26	168.1828	92.86	85.73	78.59
27	167.9618	92.86	85.71	78.57
28	167.7240	92.85	85.69	78.54
29	167.4678	92.83	85.67	78.50
30	167.1927	92.82	85.65	78.47
31	166.8979	92.81	85.62	78.43
32	166.5820	92.80	85.59	78.39
33	166.2430	92.78	85.56	78.34
34	165.8797	92.77	85.53	78.30
35	165.4904	92.75	85.50	78.25
36	165.0727	92.73	85.46	78.19
37	164.6238	92.71	85.42	78.13
38	164.1427	92.69	85.38	78.07
39	163.6274	92.67	85.33	78.00
40	163.0751	92.64	85.28	77.92
41	162.4845	92.61	85.23	77.84
42	161.8533	92.59	85.17	77.76
43	161.1802	92.55	85.11	77.66
44	160.4629	92.52	85.04	77.56
45	159.6996	92.49	84.97	77.46
46	158.8881	92.45	84.90	77.34
47	158.0262	92.41	84.81	77.22
48	157.1112	92.36	84.72	77.09
49	156.1410	92.31	84.63	76.94
50	155.1110	92.26	84.53	76.79
51	154.0181	92.21	84.42	76.63
52	152.8586	92.15	84.30	76.45
53	151.6392	92.09	84.17	76.26
54	150.3546	92.02	84.04	76.06
55	149.0000	91.95	83.89	75.84
56	147.5689	91.87	83.74	75.60
57	146.0550	91.78	83.57	75.35
58	144.4512	91.69	83.39	75.08
59	142.7493	91.59	83.19	74.78
60	140.9418	91.49	82.97	74.46
61	139.0186	91.37	82.74	74.10
62	136.9707	91.24	82.48	73.72
63	134.8201	91.10	82.20	73.30
64	132.5658	90.95	81.90	72.84
65	130.2054	90.78	81.57	72.35
66	127.7388	90.61	81.21	71.82

Age	Monthly Factor	Percentage of Standard Annuity *		
		12 Months	24 Months	36 Months
		67	125.1645	90.41
68	122.4833	90.20	80.41	70.61
69	119.6953	89.97	79.95	69.92
70	116.8023	89.73	79.45	69.18
71	113.8060	89.46	78.91	68.37
72	110.7095	89.16	78.32	67.48
73	107.5159	88.84	77.68	66.52
74	104.2301	88.49	76.97	65.46
75	100.8575	88.10	76.20	64.31
76	97.4042	87.68	75.36	63.04
77	93.8773	87.22	74.43	61.65
78	90.2852	86.71	73.42	60.13
79	86.6369	86.15	72.30	58.45
80	82.9417	85.53	71.06	56.60
81	79.2103	84.85	69.70	54.55
82	75.4541	84.10	68.19	52.29
83	71.6846	83.26	66.52	49.78
84	67.9141	82.33	64.66	46.99
85	64.1551	81.30	62.59	43.89
86	60.4201	80.14	60.28	40.42
87	56.7253	78.85	57.69	36.54
88	53.0874	77.40	54.79	32.19
89	49.5156	75.77	51.53	27.30
90	46.0263	73.93	47.86	21.78
91	42.6271	71.85	43.70	15.55

*Factors should be applied after any reduction for early retirement

Teacher Retirement System of Texas
Life Annuity Factors Per \$1 of Monthly Benefit

Age at Retirement	Annuity Factor	Age at Retirement	Annuity Factor
21	169.069	51	154.018
22	168.915	52	152.859
23	168.751	53	151.639
24	168.576	54	150.355
25	168.387	55	149.000
26	168.183	56	147.569
27	167.962	57	146.055
28	167.724	58	144.451
29	167.468	59	142.749
30	167.193	60	140.942
31	166.898	61	139.019
32	166.582	62	136.971
33	166.243	63	134.820
34	165.880	64	132.566
35	165.490	65	130.205
36	165.073	66	127.739
37	164.624	67	125.165
38	164.143	68	122.483
39	163.627	69	119.695
40	163.075	70	116.802
41	162.485	71	113.806
42	161.853	72	110.709
43	161.180	73	107.516
44	160.463	74	104.230
45	159.700	75	100.857
46	158.888	76	97.404
47	158.026	77	93.877
48	157.111	78	90.285
49	156.141	79	86.637
50	155.111	80	82.942

Interest Annuity Factors

Number of Payments	Annuity Factor	Number of Payments	Annuity Factor	Number of Payments	Annuity Factor	Number of Payments	Annuity Factor	Number of Payments	Annuity Factor	Number of Payments	Annuity Factor
1	1.000	41	46.183	81	103.238	121	175.286	161	266.266	201	381.153
2	2.006	42	47.453	82	104.842	122	177.311	162	268.824	202	384.382
3	3.018	43	48.730	83	106.455	123	179.349	163	271.396	203	387.631
4	4.035	44	50.016	84	108.078	124	181.398	164	273.984	204	390.899
5	5.059	45	51.308	85	109.710	125	183.459	165	276.586	205	394.185
6	6.088	46	52.608	86	111.352	126	185.532	166	279.204	206	397.491
7	7.124	47	53.916	87	113.004	127	187.617	167	281.838	207	400.816
8	8.166	48	55.231	88	114.665	128	189.715	168	284.486	208	404.161
9	9.213	49	56.554	89	116.335	129	191.825	169	287.151	209	407.525
10	10.267	50	57.885	90	118.016	130	193.947	170	289.830	210	410.909
11	11.327	51	59.224	91	119.706	131	196.081	171	292.526	211	414.313
12	12.394	52	60.570	92	121.406	132	198.228	172	295.237	212	417.736
13	13.466	53	61.925	93	123.117	133	200.388	173	297.964	213	421.180
14	14.545	54	63.287	94	124.837	134	202.560	174	300.707	214	424.644
15	15.630	55	64.657	95	126.567	135	204.745	175	303.466	215	428.128
16	16.722	56	66.035	96	128.308	136	206.943	176	306.241	216	431.632
17	17.819	57	67.422	97	130.058	137	209.153	177	309.033	217	435.157
18	18.924	58	68.816	98	131.819	138	211.377	178	311.840	218	438.703
19	20.034	59	70.219	99	133.590	139	213.613	179	314.665	219	442.269
20	21.151	60	71.629	100	135.371	140	215.863	180	317.505	220	445.856
21	22.275	61	73.048	101	137.163	141	218.126	181	320.363	221	449.464
22	23.405	62	74.476	102	138.966	142	220.402	182	323.237	222	453.094
23	24.542	63	75.911	103	140.779	143	222.691	183	326.128	223	456.744
24	25.686	64	77.355	104	142.602	144	224.994	184	329.035	224	460.416
25	26.836	65	78.808	105	144.436	145	227.310	185	331.960	225	464.109
26	27.993	66	80.269	106	146.281	146	229.640	186	334.902	226	467.824
27	29.157	67	81.739	107	148.137	147	231.983	187	337.861	227	471.561
28	30.328	68	83.217	108	150.004	148	234.340	188	340.837	228	475.319
29	31.505	69	84.703	109	151.881	149	236.711	189	343.831	229	479.100
30	32.689	70	86.199	110	153.769	150	239.095	190	346.843	230	482.903
31	33.880	71	87.703	111	155.669	151	241.494	191	349.872	231	486.727
32	35.079	72	89.216	112	157.580	152	243.907	192	352.918	232	490.575
33	36.284	73	90.738	113	159.501	153	246.334	193	355.983	233	494.444
34	37.496	74	92.269	114	161.434	154	248.775	194	359.065	234	498.337
35	38.715	75	93.809	115	163.379	155	251.230	195	362.166	235	502.252
36	39.942	76	95.357	116	165.335	156	253.699	196	365.284	236	506.190
37	41.176	77	96.915	117	167.302	157	256.184	197	368.421	237	510.151
38	42.416	78	98.482	118	169.280	158	258.682	198	371.576	238	514.135
39	43.665	79	100.058	119	171.271	159	261.195	199	374.750	239	518.143
40	44.920	80	101.644	120	173.272	160	263.723	200	377.942	240	522.174

Interest Accumulation Factors

Number of Months	Accumulated Interest	Number of Months	Accumulated Interest	Number of Months	Accumulated Interest	Number of Months	Accumulated Interest	Number of Months	Accumulated Interest	Number of Months	Accumulated Interest
1	1.006	41	1.270	81	1.604	121	2.025	161	2.558	201	3.230
2	1.012	42	1.278	82	1.613	122	2.037	162	2.573	202	3.249
3	1.018	43	1.285	83	1.623	123	2.049	163	2.588	203	3.268
4	1.024	44	1.293	84	1.632	124	2.061	164	2.603	204	3.287
5	1.030	45	1.300	85	1.642	125	2.073	165	2.618	205	3.306
6	1.036	46	1.308	86	1.651	126	2.085	166	2.633	206	3.325
7	1.042	47	1.315	87	1.661	127	2.098	167	2.649	207	3.345
8	1.048	48	1.323	88	1.671	128	2.110	168	2.664	208	3.364
9	1.054	49	1.331	89	1.681	129	2.122	169	2.680	209	3.384
10	1.060	50	1.339	90	1.690	130	2.135	170	2.695	210	3.404
11	1.066	51	1.346	91	1.700	131	2.147	171	2.711	211	3.424
12	1.073	52	1.354	92	1.710	132	2.160	172	2.727	212	3.444
13	1.079	53	1.362	93	1.720	133	2.172	173	2.743	213	3.464
14	1.085	54	1.370	94	1.730	134	2.185	174	2.759	214	3.484
15	1.091	55	1.378	95	1.740	135	2.198	175	2.775	215	3.504
16	1.098	56	1.386	96	1.751	136	2.211	176	2.791	216	3.525
17	1.104	57	1.394	97	1.761	137	2.223	177	2.808	217	3.546
18	1.111	58	1.403	98	1.771	138	2.237	178	2.824	218	3.566
19	1.117	59	1.411	99	1.781	139	2.250	179	2.841	219	3.587
20	1.124	60	1.419	100	1.792	140	2.263	180	2.857	220	3.608
21	1.130	61	1.427	101	1.802	141	2.276	181	2.874	221	3.629
22	1.137	62	1.436	102	1.813	142	2.289	182	2.891	222	3.650
23	1.144	63	1.444	103	1.824	143	2.303	183	2.908	223	3.672
24	1.150	64	1.453	104	1.834	144	2.316	184	2.925	224	3.693
25	1.157	65	1.461	105	1.845	145	2.330	185	2.942	225	3.715
26	1.164	66	1.470	106	1.856	146	2.343	186	2.959	226	3.737
27	1.171	67	1.478	107	1.867	147	2.357	187	2.976	227	3.759
28	1.177	68	1.487	108	1.877	148	2.371	188	2.994	228	3.780
29	1.184	69	1.495	109	1.888	149	2.385	189	3.011	229	3.803
30	1.191	70	1.504	110	1.900	150	2.399	190	3.029	230	3.825
31	1.198	71	1.513	111	1.911	151	2.413	191	3.047	231	3.847
32	1.205	72	1.522	112	1.922	152	2.427	192	3.064	232	3.870
33	1.212	73	1.531	113	1.933	153	2.441	193	3.082	233	3.892
34	1.219	74	1.540	114	1.944	154	2.455	194	3.100	234	3.915
35	1.226	75	1.549	115	1.956	155	2.470	195	3.119	235	3.938
36	1.234	76	1.558	116	1.967	156	2.484	196	3.137	236	3.961
37	1.241	77	1.567	117	1.979	157	2.499	197	3.155	237	3.984
38	1.248	78	1.576	118	1.990	158	2.513	198	3.174	238	4.008
39	1.255	79	1.585	119	2.002	159	2.528	199	3.192	239	4.031
40	1.263	80	1.595	120	2.014	160	2.543	200	3.211	240	4.055

Figure: 40 TAC §374.1(c)

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
Impersonating another person holding an occupational therapy license or allowing another person to use his or her license	Sec. 454.301(a)(6) §374.2(1)	30-45 day license suspension +investigative costs / Cease and desist letter to the impersonator	45-90 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare	Sec. 454.301(a)(6) §374.2(2)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession	Sec. 454.301(a)(6) §374.2(3)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report	Sec. 454.301(a)(6) §374.2(4)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally harassing, abusing, or	Sec. 454.301(a)(6) §374.2(5)	30-60 hours community service	30-60 day license suspension	Revocation or Surrender of license	Alternative disciplinary decisions or

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
intimidating a patient either physically or verbally		+investigative costs	with restricted practice +investigative costs; referral for criminal investigative entity	(until conditions are met or indefinitely)	pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code, §§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations	Sec. 454.301(a)(6) §374.2(6)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Recommending or prescribing therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or	Sec. 454.301(a)(6) §374.2(7)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
other consideration from the third person					development.
Breaching the confidentiality of the patient/therapist relationship	Sec. 454.301(a)(6) §374.2(8)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards	Sec. 454.301(a)(6) §374.2(9)	30-60 hours community service and additional course in ethics +investigative costs	30-60 day license suspension and additional course in ethics +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Practicing occupational therapy after the expiration of a temporary, provisional, or regular license	Sec. 454.301(a)(6) §374.2(10)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Violation of Chapter 373 of this title (relating to Supervision)	Sec. 454.301(a)(6) §374.2(11)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Advertising in a manner which is false, misleading, or deceptive / Advertised in a	Sec. 454.301(a)(6) §374.2(12) / Sec. 454.301(7)	Letter to cease and desist; if licensed, 30-60 hours community	Letter to cease and desist; if licensed, 30-60 day license	Revocation or Surrender of license (until conditions	Alternative disciplinary decisions or pursuing other courses of action

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
manner that in any way tends to deceive or defraud the public		service +investigative costs	suspension +investigative costs	are met or indefinitely)	may depend on the nature of the situation, repeat of violation, or development.
[Failing to register an occupational therapy facility which is not exempt or failing to renew the registration of an occupational therapy facility which is not exempt]	[Sec. 454.301(a)(6) §374.2(13)]	[Letter to cease and desist; if licensed, letter of reprimand to the TIC and facility +investigative costs]	[Letter to cease and desist; if licensed, 30-60 day suspension for TIC and facility +investigative costs]	[Revocation or Surrender of license (until conditions are met or indefinitely)]	[Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.]
[Practicing in an unregistered occupational therapy facility which is not exempt]	[Sec. 454.301(a)(6) §374.2(14)]	[Letter of reprimand to the TIC, OTs, OTAs, and facility and/or 30-60 hours community service +investigative costs]	[30-60 day license suspension for the TIC, OTs, and OTAs +investigative costs]	[Revocation or Surrender of license (until conditions are met or indefinitely)]	[Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.]
Failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or delay of patient treatment for those patients/clients under the licensee's care	Sec. 454.301(a)(6) §374.2(15)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations	Sec. 454.301(a)(6) §374.2(16)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failed CE Audit	§367.3	30-60 hours community service and completion of CE hours	30-60 day license suspension and completion of	Revocation or Surrender of license (until conditions	Alternative disciplinary decisions or pursuing other courses of action

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
		+investigative costs	CE hours +investigative costs	are met or indefinitely)	may depend on the nature of the situation, repeat of violation, or development.
Failed to properly renew license	Sec. 454.252 §367.1(b) §370.1	30-60 hours community service and completion of CE hours +investigative costs	30-60 day license suspension and completion of CE hours +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Used drugs or intoxicating liquors to an extent that affects the applicant's or license holder's professional competence	Sec. 454.301(1)	30-90 day license suspension with restricted practice +investigative costs	6-12 month license suspension with provisional restricted practice +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been convicted of a crime, other than a minor offense defined as a "minor misdemeanor," "violation," or "offense," in any court if the act for which the applicant or license holder was convicted is determined by the board to have a direct bearing on whether the applicant or license holder should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant	Sec. 454.301(2)	Restricted practice	30-60 day license suspension with provisional restricted practice +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Obtained or attempted to obtain a license by	Sec. 454.301(3)	Letter of cease and desist for attempter / 30-	60-90 day license suspension	Revocation or Surrender of license	Alternative disciplinary decisions or

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
fraud or deception		60 day licensee suspension +investigative costs	with restricted practice +investigative costs; referral for criminal investigative entity	(until conditions are met or indefinitely)	pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant	Sec. 454.301(4)	30-60 hours community service +investigative costs	30-90 day license suspension with restricted practice +investigative costs; referral for criminal investigative entity	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been found mentally incompetent by a court	Sec. 454.301(5)	30-60 day license suspension with provisional restricted practice +investigative costs	6-12 month license suspension with provisional restricted practice +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Had a license to practice occupational therapy revoked or suspended or had other disciplinary action taken against the applicant or license holder by the proper licensing authority of another state, territory, or nation	Sec. 454.301(8)	30-60 hours community service +investigative costs	30-60 day license suspension with restricted practice +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Capital Area Rural Transportation System

CARTS RFP for Bulk Fuel

The Capital Area Rural Transportation System (CARTS) is seeking priced proposals from qualified and experienced firms for the purchase and delivery of bulk fuel as described in Section 2, Project Specifications, in this solicitation.

Fuel purchased will be delivered to the CARTS Lee Dildy Operations Complex at 5300 Tucker Hill Lane, Cedar Creek, Texas 78612

The schedule for this solicitation is:

RFP Release Date: June 3, 2019

Questions or Request for Deviation due to CARTS: June 18, 2019

Responses to Questions and Deviations due: June 25, 2019

Proposals Due: July 2, 2019, 2:00 p.m. CST

Contract Award: TBD

Interested parties may download the solicitation and specifications for this procurement at www.CARTSprocurement@RideCARTS.com or a package can be picked up at the address noted above between the hours of 10:00 a.m. - 4:00 p.m.

TRD-201901600

David L. Marsh

General Manager

Capital Area Rural Transportation System

Filed: May 29, 2019

Central Texas Workforce Development Board

Public Notice for Killeen Facility

The Workforce Solutions of Central Texas Board (WSCTB) is soliciting proposals for lease space in the metropolitan area of Killeen, Texas. WSCTB serves the Central Texas Service Workforce Area consisting of the following counties: Bell, Coryell, Lampasas, Milam, Mills, Hamilton, and San Saba. The WSCTB plans and oversees workforce programs under Federal and State funding sources.

Proposal specifications may be obtained from the offices of WSCTB by contacting Horace Dicks at (254) 742-4512, or at 200 North Main, P.O. Box 450, Belton, Texas, 76513, or you may download a computer version of the RFP at www.workforcelink.com/vendor.html.

Interested bidders must provide an e-mail **notice of intent to bid** to Horace Dicks at horaced@workforcelink.com by **June 7, 2019**.

Questions about the RFP may be e-mailed to Horace Dicks at horaced@workforcelink.com. All related questions must be submitted in writing by **June 21, 2019**.

Proposals must be submitted by mail to:

Central Texas Workforce Board

Attention: Horace Dicks

P.O. Box 450

Belton, Texas 76513

Proposals must be postmarked by July 12, 2019.

WSCTB reserves the right to accept or reject any or all proposals received as a result of this request, or to negotiate with all qualified vendors, or to cancel in part or in its entirety this Request for Proposals (RFP), if it is in the best interest of the WSCTB.

WSCTB encourages historically underutilized businesses to request and respond to all RFPs.

Equal Opportunity Employer/Program

Auxiliary Aids and Services available upon request to individuals with disabilities.

For Relay Texas, dial 7-1-1

www.workforcelink.com

TRD-201901601

Horace Dicks

Director of Administration

Central Texas Workforce Development Board

Filed: May 30, 2019

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/10/19 - 06/16/19 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/10/19 - 06/16/19 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 06/01/19 - 06/30/19 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 06/01/19 - 06/30/19 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-201901657

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 4, 2019

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 16, 2019**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **July 16, 2019**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Big Spring Independent School District; DOCKET NUMBER: 2019-0498-PST-E; IDENTIFIER: RN101751287; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 9900 West Interstate Highway 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(2) COMPANY: City of Strawn; DOCKET NUMBER: 2019-0050-PWS-E; IDENTIFIER: RN101424968; LOCATION: Strawn, Palo Pinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director (ED) within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for trihalomethanes (TTHM) and haloacetic acids for Disinfection Byproducts at Site 1 during the second quarter of 2018; 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c) and TCEQ Agreed Order Docket Number 2016-0769-PWS-E, Ordering Provision Numbers 2.c and 2.d, by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total TTHM based on the locational running annual average; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or associated late fees for TCEQ Financial Administration Account Number 1820005 for Fiscal Year 2018; and 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public

notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for TTHM during the second quarter of 2018; PENALTY: \$675; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-1437; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: CRYSTAL CLEAR WATER, INCORPORATED; DOCKET NUMBER: 2019-0362-PWS-E; IDENTIFIER: RN101277481; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(6), by failing to ensure that clearwells and potable water storage tanks, including associated appurtenances such as valves, pipes, and fittings, are thoroughly tight against leakage; PENALTY: \$52; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: D.N.D. Corporation dba Quick Stop Food Mart; DOCKET NUMBER: 2019-0315-PST-E; IDENTIFIER: RN101997948; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of the protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every 30 days; 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; 30 TAC §334.74, by failing to investigate suspected releases of regulated substances within 30 days of discovery; and 30 TAC §334.605(a), by failing to ensure that the certified Class A and Class B operator is re-trained within three years of the last training date; PENALTY: \$34,243; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: DAVIS OPERATING COMPANY; DOCKET NUMBER: 2018-1614-AIR-E; IDENTIFIER: RN110469616; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: salt water disposal and natural gas compression station; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by failing to prevent nuisance odor conditions; 30 TAC §101.10(b)(1) and (2), and (e) and THSC, §382.085(b), by failing to submit an initial emissions inventory for calendar year 2015 and an annual emissions inventory update for calendar years 2016 and 2017; 30 TAC §101.20(2) and §113.1090, 40 Code of Federal Regulations §63.6603(a), and THSC, §382.085(b), by failing to comply with the maintenance requirements for an existing stationary reciprocating internal combustion engine; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; 30 TAC §117.2035(a)(1) and THSC, §382.085(b), by failing to install a totalizing fuel flow meter to measure the gas and liquid fuel usage; 30 TAC §117.8140(b) and THSC, §382.085(b), by failing to check the engine for proper operation by recorded measurements of engine nitrogen oxides and carbon monoxide emissions at least quarterly and within two weeks after each occurrence of engine maintenance that may be expected to increase emissions; PENALTY: \$39,249; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Flexicore of Texas, Ltd.; DOCKET NUMBER: 2019-0236-AIR-E; IDENTIFIER: RN102295748; LOCATION: Houston, Fort Bend County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §101.24(b) and Texas Health

and Safety Code, §382.085(b), by failing to submit the emissions/inspection fee basis form within 60 days after being provided the emissions/inspection fee information packet; PENALTY: \$1,188; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Forest Water Supply Corporation; DOCKET NUMBER: 2019-0294-PWS-E; IDENTIFIER: RN101183465; LOCATION: Wells, Cherokee County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §21.4 and §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees, Consolidated Water Quality fees, and associated late fees for TCEQ Financial Administration Account Numbers 90370019 and 23006825 for Fiscal Year 2019; 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on May 31, 2018, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from the active groundwater source in use at the time the distribution coliform-positive samples were collected; 30 TAC §290.115(e), by failing to report the results of the Stage 2 Disinfection Byproducts (DBP2) sampling to the executive director (ED) for the January 1, 2018 - March 31, 2018, monitoring period; and 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the ED within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes and total haloacetic acids for DBP2 at Site 1 during the fourth quarter of 2017 through the third quarter of 2018 and at Site 2 during the first quarter of 2018 through the third quarter of 2018; PENALTY: \$752; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: JESUS GARZA; DOCKET NUMBER: 2019-0727-WOC-E; IDENTIFIER: RN106875040; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: KELLY BURT DOZER, INCORPORATED; DOCKET NUMBER: 2019-0074-WQ-E; IDENTIFIER: RN104317862; LOCATION: College Station, Brazos County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit associated with industrial activities; PENALTY: \$77,813; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Laredo Petroleum, Incorporated; DOCKET NUMBER: 2019-0376-AIR-E; IDENTIFIER: RN106947963; LOCATION: Garden City, Reagan County; TYPE OF FACILITY: tank battery; RULES VIOLATED: 30 TAC §106.4(a)(1)(B) and §106.6(b), Permit by Rule (PBR) Registration Number 114498, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum registered emission rates; and 30 TAC §106.4(c), PBR Registration Number 114498, and THSC, §382.085(b), by failing to maintain emissions control equipment in good condition and operated properly during operation of the plant; PENALTY: \$57,563; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892;

REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(11) COMPANY: JIMMY J. MARBLE; DOCKET NUMBER: 2019-0732-WOC-E; IDENTIFIER: RN110493673; LOCATION: Woden, Nacogdoches County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Mitsubishi Caterpillar Forklift America Incorporated; DOCKET NUMBER: 2018-1068-AIR-E; IDENTIFIER: RN100219161; LOCATION: Houston, Harris County; TYPE OF FACILITY: forklift manufacturing facility; RULES VIOLATED: 30 TAC §§101.20(2), 113.100, 113.960, 116.115(c), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.9(j) and §63.3910(c)(6), New Source Review (NSR) Permit Number 22104, Special Conditions (SC) Number 5.B, Federal Operating Permit (FOP) Number O3313, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a change in the notification of compliance status in writing within 15 calendar days after the change; 30 TAC §§101.20(2), 113.960, 116.115(c), and 122.143(4), 40 CFR §63.3890(b)(1), NSR Permit Number 22104, SC Number 5.B, FOP Number O3313, GTC and STC Numbers 1.A and 9, and THSC, §382.085(b), by failing to comply with the organic hazardous air pollutants emissions limit for existing general use coatings; 30 TAC §§101.20(2), 116.115(c), and 122.143(4), 40 CFR §63.3920(a), NSR Permit Number 22104, SC Number 5.B, FOP Number O3313, GTC and STC Numbers 1.A and 9, and THSC, §382.085(b), by failing to submit 40 CFR Part 63, Subpart M M M M semiannual compliance reports with the deviation reports no later than 30 days after the end of each reporting period; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 22104, SC Number 4.B, FOP Number O3313, GTC and STC Numbers 3.A(iv)(3) and 9, and THSC, §382.085(b), by failing to maintain records for the quarterly visible emissions observations; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 22104, General Conditions Number 7 and SC Numbers 12.C and 12.F, FOP Number O3313, GTC and STC Numbers 1 and 9, and THSC, §382.085(b), by failing to maintain records to demonstrate compliance; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 22104, SC Number 8, FOP Number O3313, GTC and STC Numbers 1 and 9, and THSC, §382.085(b), by failing to maintain the pressure differential across the filters in the paint booths at up to 0.6 inch water column; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 22104, SC Number 10, FOP Number O3313, GTC and STC Numbers 1 and 9, and THSC, §382.085(b), by failing to maintain the pressure differential across the filter in the abrasive blasting booth in the range of 0.7 to 3.0 inches water column, and failing to calibrate the photohelic gauge at least annually; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O3313, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$74,458; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$29,783; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: MMC PROPERTIES, INCORPORATED dba El Tigre Food Store 12; DOCKET NUMBER: 2019-0378-PST-E; IDENTIFIER: RN102460029; LOCATION: Alamo, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.52(a)(2), by failing to ensure that any repair or relining of an underground storage tank system is conducted by qualified personnel possessing the appropriate skills, experience,

competence, and any required license or certification to complete the work; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Tyler Gerhardt, (512) 239-2506; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: MURPHY OIL USA, INCORPORATED dba Murphy USA 5694 and Murphy USA 7378; DOCKET NUMBER: 2018-1667-PST-E; IDENTIFIERS: RN102238557 and RN105084552; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITIES: convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; and 30 TAC §334.605(a), by failing to ensure that the certified Class A and Class B operator is re-trained within three years of their last training date; PENALTY: \$17,626; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: PRUSKI'S MARKET, INCORPORATED; DOCKET NUMBER: 2019-0465-PST-E; IDENTIFIER: RN101381945; LOCATION: Adkins, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure the underground storage tank (UST) corrosion protection system was operated and maintained in a manner that will ensure continuous corrosion protection; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$5,937; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: SANM INCORPORATED dba Rick's Drive In; DOCKET NUMBER: 2018-1668-PST-E; IDENTIFIER: RN101377471; LOCATION: Denton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9)(A)(iv) and (v), and §334.72, by failing to report a suspected release, due to Inconclusive Statistical Inventory Reconciliation results, to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: \$21,478; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Sherry Kaufmann dba Caddo-Mesa Water Supply Corporation; DOCKET NUMBER: 2019-0207-PWS-E; IDENTIFIER: RN101442325; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)) and §290.122(c)(2)(A) and (f), by failing to collect a raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active source within 24 hours of notification of the distribution total coliform-positive result for a routine sample collected on August 26, 2015, and failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to sample; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and submit the results to the ED for the July 1, 2017 - December 31, 2017, and January 1, 2018 - June 30, 2018, monitoring periods; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2013 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods; and 30

TAC §290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data for calendar years 2016 and 2017; PENALTY: \$1,030; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2019-0357-AIR-E; IDENTIFIER: RN102552387; LOCATION: Chico, Wise County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §§101.20(2), 113.100, and 116.615(2), 40 Code of Federal Regulations §63.10(d)(2), Standard Permit Registration Number 109683, Table 7 Sampling General Category (F), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit one original and one copy of the sampling reports to the TCEQ Regional Office within 60 days after completion of the testing; 30 TAC §116.615(2), Standard Permit Registration Number 109683, Table 6, and THSC, §382.085(b), by failing to comply with the emissions limit; and 30 TAC §116.615(2), Standard Permit Registration Number 109683, Table 7 Sampling General Category (B), and THSC, §382.085(b), by failing to conduct sampling in accordance with the appropriate Environmental Protection Agency Reference Methods; PENALTY: \$3,826; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Utilities Investment Company, Incorporated; DOCKET NUMBER: 2019-0293-PWS-E; IDENTIFIER: RN101260669; LOCATION: Trinity, Walker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(z), by failing to create a nitrification action plan for a system distributing chloraminated water; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$333; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Victoria County Water Control and Improvement District Number 2; DOCKET NUMBER: 2018-1760-PWS-E; IDENTIFIER: RN101398303; LOCATION: Placedo, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2017 - June 30, 2017, July 1, 2017 - December 31, 2017, and January 1, 2018 - June 30, 2018, monitoring periods, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2017 - June 30, 2017, monitoring period; 30 TAC §290.117(n), by failing to comply with the additional sampling requirements as required by the ED to ensure that minimal levels of corrosion are maintained in the distribution system; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st each year a copy of the annual CCR and certification that the CCR has been distributed to the customers

of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar year 2016; PENALTY: \$1,544; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201901649

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 4, 2019



Amended Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Bin Enterprises Inc: SOAH Docket No. 582-19-4248; TCEQ Docket No. 2017-1007-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 18, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 24, 2019, concerning assessing administrative penalties against and requiring certain actions of BIN ENTERPRISES INC, for violations in Harris County, Texas, of: Tex. Water Code §26.3475(d) and 30 TAC §§334.7(d)(3) and (e)(2), 334.49(a)(1), and 334.54(b)(2), (b)(3), and (e)(2).

The hearing will allow BIN ENTERPRISES INC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, and whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford BIN ENTERPRISES INC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of BIN ENTERPRISES INC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** BIN ENTERPRISES INC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Kathryn Schroeder, Staff Attorney, Texas Commission on Environ-

mental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: May 30, 2019

TRD-201901698

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 5, 2019



Enforcement Orders

An agreed order was adopted regarding Metroplex Sand & Gravel, Ltd., Docket No. 2016-1579-AIR-E on June 4, 2019, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding F80 Investment Inc. dba 105 Superette, Docket No. 2018-0482-PST-E on June 4, 2019, assessing \$5,131 in administrative penalties with \$1,026 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE ALZAFAR TEMPLE OF THE ANCIENT ARABIC ORDER OF THE NOBLES OF THE MYSTIC SHRINE FOR NORTH AMERICA, Docket No. 2018-0515-PWS-E on June 4, 2019, assessing \$522 in administrative penalties with \$104 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Maverick Pit Stop #2, LLC, Docket No. 2018-0517-PST-E on June 4, 2019, assessing \$2,611 in administrative penalties with \$522 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding O MA Shreeful Inc. dba Rita's Super Store, Docket No. 2018-0522-PST-E on June 4, 2019, assessing \$3,499 in administrative penalties with \$699 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Gerhardt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Maypearl, Docket No. 2018-0701-MWD-E on June 4, 2019, assessing \$5,625 in administrative penalties with \$1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ken's Texaco, Ltd. dba Bel Meade Chevron Service, Docket No. 2018-0743-PST-E on June 4, 2019, assessing \$2,562 in administrative penalties with \$512 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RALI MART INC. dba Fast Trip, Docket No. 2018-0806-PST-E on June 4, 2019, assessing \$3,727 in administrative penalties with \$745 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HMP 2243 LP, Docket No. 2018-0872-EAQ-E on June 4, 2019, assessing \$6,588 in administrative penalties with \$1,317 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AIH ENTERPRISE INC. dba Lewis Grocery & Deli, Docket No. 2018-0948-PST-E on June 4, 2019, assessing \$6,499 in administrative penalties with \$1,299 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2018-0986-AIR-E on June 4, 2019, assessing \$6,563 in administrative penalties with \$1,312 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ETC Field Services LLC, Docket No. 2018-1020-AIR-E on June 4, 2019, assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lide Industries, LLC, Docket No. 2018-1131-AIR-E on June 4, 2019, assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, En-

forcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Preferred Hospital Leasing Muleshoe, Inc. dba Muleshoe Area Medical Center, Docket No. 2018-1144-PST-E on June 4, 2019, assessing \$3,210 in administrative penalties with \$642 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SKIDMORE STORE, LLC dba Papa's Market, Docket No. 2018-1159-PST-E on June 4, 2019, assessing \$3,499 in administrative penalties with \$699 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Halyard Energy Wharton, LLC, Docket No. 2018-1210-AIR-E on June 4, 2019, assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201901693
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 5, 2019



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40303

Application: Oncore Technology, LLC, 2613 Skyway Drive, Grand Prairie, Texas 75052 has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40303, to construct and operate a Type V municipal solid waste medical waste facility. The proposed facility, Oncore Technology, LLC, 2613 will be located approximately 0.9 miles southeast of the State Highway 360 and Interstate 20 intersection, 75052, in Tarrant County. The Applicant is requesting authorization to store, treat, and transfer medical waste. The registration application is available for viewing and copying at the Grand Prairie Public Library, 901 Conover Drive, Grand Prairie, Texas 75051 and may be viewed online at <https://oncoreus.com/registration>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice:

<https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.170222&lng=-97.653000&zoom=12&type=r>. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for

the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at <www.tceq.texas.gov/goto/cid>. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at <www14.tceq.texas.gov/epic/eComment/> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address, will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website <www.tceq.texas.gov/goto/pep>. General information regarding the TCEQ can be found at our web site at <www.tceq.texas.gov>. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Oncore Technology, LLC at the address stated above or by calling Mr. Mason Bryant at (972) 786-7060.

TRD-201901695

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 5, 2019



Notice of District Petition Notice Issued June 3, 2019

TCEQ Internal Control No. D-11142018-028; Frognot Water Supply Corporation (Petitioner) filed an application with the Texas Commission on Environmental Quality (TCEQ) to convert Frognot Water Supply Corporation to Frognot Special Utility District of Collin, Fannin, and Hunt Counties. Frognot Special Utility District's business address will be: 408 West FM 545, Suite 3, P.O. Box 400, Blue Ridge, Texas 75424. The petition was filed pursuant to Chapter 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Frognot Water Supply Corporation and the organization, creation and establishment of Frognot Special Utility District of Collin, Fannin, and Hunt Counties under the provisions of Article XVI, §59 of the Texas Constitution, and Chapter 65 of the Texas Water Code, as

amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, as amended. The nature of the services presently performed by Frognot Water Supply Corporation are to supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. The nature of the services proposed to be provided by Frognot Special Utility District of Collin, Fannin, and Hunt Counties are to supply water for municipal uses, domestic uses, power and commercial purposes, and other beneficial uses or controls. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201901696

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 5, 2019



Notice of Hearing: Domingo Figueroa; SOAH Docket Nos. 582-19-4463; 582-19-4464; TCEQ Docket Nos. 2019-0528-LIC; 2019-0529-LIC

APPLICATION.

Domingo Figueroa, 6123 Outlook Ridge, San Antonio, Texas 78233, has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of a Backflow Prevention Assembly Tester (BPAT) License. Mr. Figueroa has also applied for renewal of an

Irrigation Technician License. The Executive Director denied both of Mr. Figueroa's applications for cause. Mr. Figueroa requested a formal hearing on both of the Executive Director's decisions. During the review of Mr. Figueroa's applications, the Executive Director discovered that Mr. Figueroa was convicted of a Class A Misdemeanor in 2018. The Executive Director denied Mr. Figueroa's applications because this conviction was for an offense that directly relates to the duties and responsibilities of the licensed occupations.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing on this application at:

10:00 a.m. - June 27, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, provide an opportunity for settlement discussions, and address other matters as determined by the administrative law judge. The preliminary hearing will be held unless all timely hearing requests are withdrawn or the parties agree to waive the preliminary hearing.

The evidentiary phase of the contested case hearing, to be held at a later date, will be a legal proceeding similar to a civil trial in state district court to determine whether Mr. Figueroa should be issued a BPAT License and/or an Irrigation Technician License. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **If Domingo Figueroa fails to appear at the preliminary hearing or evidentiary hearing, the Executive Director will request that the hearing be canceled and that the appeal of the Executive Director's decisions be dismissed.**

SOAH's rules allow for participation by telephone or videoconference. Permission must be obtained from SOAH at least ten days before the hearing.

Legal Authority: Texas Water Code Chapters 5 and 37; Texas Occupations Code Chapter 53; Texas Government Code, Chapter 2001; 30 Texas Administrative Code (TAC) Chapter 30, and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapters 70 and 80 and 1 TAC Chapter 155.

INFORMATION.

For information concerning the hearing process, please contact the TCEQ Office of Public Interest Counsel, MC 103, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6363. Further information regarding this hearing may be obtained by contacting Alicia Ramirez, Staff Attorney, TCEQ, Environmental Law Division, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133. General information about the TCEQ can be found at our website at <https://www.tceq.texas.gov/>. General information about SOAH can be found on its website at <http://www.soah.texas.gov/index.asp>, or by calling (512) 475-4993.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <https://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas

78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: May 30, 2019

TRD-201901697

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 5, 2019



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 16, 2019**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 16, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Dario V. Guerra III dba DERBY ING; DOCKET NUMBER: 2017-1437-PWS-E; TCEQ ID NUMBER: RN101281178; LOCATION: off Interstate Highway 35 Exit 91, approximately .25 mile east on Farm-to-Market Road 1583 to County Road 3415, then 100 meters north on County Road 3415, with a plant on the southeast corner of the County Road 3415 and County Road 3440 intersection, Frio County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §§290.46(f)(4), 290.106(e), 290.107(e), and

290.108(e), by failing to provide the results of metals, minerals, cyanide, synthetic organic chemical contaminants, and radionuclides sampling to the executive director (ED) for the January 1, 2014 - December 31, 2016 monitoring period; 30 TAC §§290.46(f)(4), 290.106(e), and 290.107(e), by failing to provide the results of nitrate and volatile organic chemical (VOC) contaminants sampling to the ED for the January 1 - December 31, 2014 monitoring period; 30 TAC §§290.46(f)(4), 290.106(e), and 290.107(e), by failing to provide the results of nitrate and VOC contaminants sampling to the ED for the January 1 - December 31, 2015 monitoring period; 30 TAC §§290.46(f)(4), 290.106(e), and 290.107(e), by failing to provide the results of nitrate and VOC contaminants sampling to the ED for the January 1 - December 31, 2016 monitoring period; 30 TAC §290.46(f)(4) and §290.115(e), by failing to provide the results of Stage 2 disinfection byproducts sampling to the ED for the January 1, 2014 - December 31, 2016 monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1 - June 30, 2016 monitoring period; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1 - June 30, 2016 and July 1 - December 31, 2016 monitoring periods; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual public health service fees and/or any associated late fees for TCEQ Financial Administration Account Number 90820016 for Fiscal Years 2012 - 2019; TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 12931 for calendar year 2018; 30 TAC §290.46(m) and TCEQ AO Docket Number 2016-1054-PWS-E, Ordering Provision Number 2.a.iv., by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(1)(A) and TCEQ AO Docket Number 2016-1054-PWS-E, Ordering Provision Number 2.a.ii., by failing to inspect the facility's ground storage tank annually; 30 TAC §290.46(m)(1)(B) and TCEQ AO Docket Number 2016-1054-PWS-E, Ordering Provision Number 2.a.iii., by failing to inspect the facility's pressure tank annually; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter free chlorine throughout the distribution system at all times; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(B)(iii), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: \$3,014; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Dolores S. Perez dba Falcon Automotive; DOCKET NUMBER: 2017-1453-PST-E; TCEQ ID NUMBER: RN101490233; LOCATION: 2316 Morelos Street, Austin, Travis County; TYPE OF FACILITY: property with an out-of-service underground storage tank (UST) system; RULES VIOLATED: TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional informa-

tion regarding the UST to the TCEQ within 30 days from the date of the occurrence of the change or addition; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and §334.54(c)(2), by failing to monitor a temporarily out-of-service UST system for releases; PENALTY: \$5,250; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: RCI HOLDINGS, INC.; DOCKET NUMBER: 2018-0787-PWS-E; TCEQ ID NUMBER: RN105818264; LOCATION: 12913 Highway 87 near Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to ensure that wellheads and pump bases are sealed by a gasket or sealing compound and properly vented to prevent the possibility of contaminating the well water; 30 TAC §290.41(c)(3)(O), by failing to provide all well units with an intruder-resistant fence with lockable gates or a locked and ventilated well house; 30 TAC §290.42(i), failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(d)(2), by failing to provide the facility's two pressure tanks with a pressure release device; Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), (B)(iii), and (D)(i) and (ii), by failing to maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.46(v), by failing to ensure that all electrical wiring at the facility's well is securely installed in compliance with a local or national electric code; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$2,290; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201901651

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 4, 2019



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the proce-

dures followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 16, 2019**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 16, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: BrandLich Holdings LLC; DOCKET NUMBER: 2017-1517-MLM-E; TCEQ ID NUMBER: RN109754820; LOCATION: 14348 Donop Road, Elmendorf, Bexar County; TYPE OF FACILITY: used asphalt roofing shingle recycling site; RULES VIOLATED: 30 TAC §330.7(a), by failing to obtain authorization from the TCEQ prior to engaging in any activity of storage, processing, removal, or disposal of municipal solid waste (MSW); 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; and Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization to construct and operate a source of air emissions; PENALTY: \$27,500; STAFF ATTORNEY: Audrey Litter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Diane Espinoza; DOCKET NUMBER: 2018-0745-PST-E; TCEQ ID NUMBER: RN102465804; LOCATION: intersection of Highway 80 and Highway 81, Helena, Karnes County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator, Class A and B; PENALTY: \$16,875; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201901652
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 4, 2019

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 16, 2019**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 16, 2019**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: ALI ROSHAN, INC. dba Conoco 66; DOCKET NUMBER: 2018-1190-PST-E; TCEQ ID NUMBER: RN101810125; LOCATION: 3490 Preston Avenue, Pasadena, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which would detect a release at a frequency of at least once every 30 days; and 30 TAC §334.602(a), by failing to identify and designate for the facility at least one named individual for each class of operator - Class A, B, and C; PENALTY: \$5,000; STAFF ATTORNEY: Kathryn Schroeder, Litigation Division, MC 175, (512) 239-0588; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Shehab Alkam dba Big 5 Beverage; DOCKET NUMBER: 2017-1644-PST-E; TCEQ ID NUMBER: RN102287737; LOCATION: 1499 South Peachtree Road, Balch Springs, Dallas County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: \$7,500; STAFF ATTORNEY: Audrey Luter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201901650

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 4, 2019



General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 6, 2019, to May 31, 2019. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 7, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, July 7, 2019.

FEDERAL AGENCY ACTIONS:

Applicant: Marlin Operating Partnership, L.P.

Location: The project site is located in the Sabine Neches Waterway, at Highway 366 and 32nd Street, in Port Arthur, Orange County, Texas.

Latitude & Longitude (NAD 83): 29.982471, -93.881106

Project Description: The applicant proposes to install multiple structures into the Sabine Neches Waterway, as well as dredging of the waterway and discharging of the dredge material to accommodate the proposed ship dock and 900-foot by 140-foot vessels. The applicant proposes to install a new ship dock that consists of the following: 80-foot by 50-foot ship dock platform; 18-foot by 100-foot approach way; 25-foot by 40-foot fire water platform; four breasting dolphins and six mooring dolphins; 25-foot by 18-foot shoreline valve containment; 20-foot by 30-foot dock house; three loading arms and a new gangway; and 1,100 feet of shoreline revetment protection. The applicant proposes to dredge 121,500 cubic yards with 50,000 to 70,000 cubic yards of annual maintenance dredging in the Sabine Neches Waterway and requesting to place the initial dredge material in Dredge Material Placement Areas 23, 24, or 25. The proposed project dredging activities will make the ship berthing area have a depth of (-) 40.0 feet Mean

Lower Low Water with an allowable 2.0 feet over depth. The purpose of the proposed dredging, ship dock and associated structures is to accommodate 900-foot by 140-foot vessels for loading and unloading of products at the Martin Facility.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1995-02291. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under Section 401 of the Clean Water Act.

CMP Project No: 19-1300-F1

Applicant: Hilcorp Energy Company

Location: The project site is located on Bolivar Island between the Gulf Intracoastal Waterway and the Gulf of Mexico on the north side Highway 87, 0.25-mile northeast of the intersection of Los Patos Drive and Highway 87, in Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.48742, -94.565179

Project Description: The applicant proposes to impact 3.22 acres of wetlands by discharging approximately 11,987 cubic yards of fill material to be used in the construction of the base of a facility at two feet above natural grade and three-foot-high ring levees. An additional 2,034 cubic yards of limestone fill will be discharged to construct the surface of the facility and to construct an access road. The proposed flow line 1 will be installed via horizontal directional drilling (HDD) from the proposed facility to a temporary workspace on the north side of Highway 87. It will then be continued via HDD parallel to Highway 87 to an existing pipeline to the east. The proposed flow line 2 will be installed via HDD from the proposed facility to the south side of Highway 87 and tied to an existing 6-inch-diameter pipeline. A 40-foot by 80-foot temporary workspace and a 5-foot by 5-foot by 5-foot excavation will be required at each tie-in location. Each temporary workspace will be matted and the spoil from the excavation will be temporarily side cast and used as backfill immediately upon project completion.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00160. This application will be reviewed pursuant to Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under Section 401 of the Clean Water Act.

CMP Project No: 19-1262-F1

Applicant: Cinco Natural Resources Corporation

Location: The project site is located in Redfish Bay, within and outside the Corpus Christi Channel, and on the western lobe of Pelican Island in Nueces County, Texas.

Latitude & Longitude (NAD 83): 12-inch pipeline to be removed: Latitude: 27.82543; Longitude: -97.17050; 6-inch pipeline to be removed: Latitude: 27.82889; Longitude: -97.14418; Proposed Placement Area: Latitude: 27.81878; Longitude: -97.15958

Project Description: Cinco (the applicant) received a Direction to Remove (DTR) letter from the Corps requiring the pipelines be either removed or lowered under the mudline of the current Federally authorized depth of the "New Work" project of the CCSC. Further coordination with the Port of Corpus Christi Authority (PCCA) determined that PCCA would require removal of the pipeline from PCCA property (2,500 feet in either direction from the channel centerline). Pipeline 1 is a 6-inch pipeline running in a north to south orientation near the eastern lobe of Pelican Island. Pipeline 2 is a 12-inch pipeline also running in a north to south orientation near the western lobe of Pelican Island. Each

of these pipelines was installed in the late 1960's via trenching methods and were authorized under blanket permits, 09669 and 12769. Ownership of the pipelines has changed numerous times throughout the past five decades. However, the Corps has records of the permit transfer from Boss Exploration to Cinco in approximately 2008. Due to the age of the pipelines it is unlikely that the lines can be pulled from their current depths. The applicant determined that the safest, most efficient method for removal would be a combination of jetting and hydraulic dredging to expose the pipelines followed by cutting and removal. In shallower water depths, each pipeline will be jetted to the surface, cut, and removed. Where water depths, depth of cover, and other site-specific details require dredging, the applicant will hydraulically dredge to expose the pipe, cut, and remove the section. The applicant anticipates that this hydraulic dredging would require the removal of approximately 15,000 cubic yards of material. Pelican Island's western lobe is the preferred dredge material placement area (DMPA). Pelican Island is a beneficial use island historically created from dredge material placed by the Corps and PCCA. The applicant proposes to undertake the work necessary to remove the required 5,000 feet of each pipeline immediately required to comply with the DTR letter. The applicant will perform a pre-construction and post-construction bathymetry survey in the vicinity of each pipeline removal within the CCSC to document that shoaling has not occurred within the channel as a result of these activities. It is not anticipated that any shoaling will occur as a result of this project. However, if any shoaling is documented as a result of these surveys that could create a hazard to navigation, the applicant will coordinate with the Corps and PCCA and will immediately remove any accumulated material down to preconstruction contours. The remaining sections of pipeline would be capped and remain decommissioned in place until which time Cinco can coordinate long-term plans for the remaining sections. It is anticipated that Cinco will coordinate long-term plans with the appropriate entities within 12 - 18 months from the date of the currently required pipeline removal. The applicant intends to hydraulically dredge to expose the pipelines. Due to significant ship traffic and the extreme movement of water and currents within the project area, the applicant prefers to remove the pipelines in sections. It is anticipated that dredging would occur to the minimum extent necessary to expose the pipelines. Upon dredging, the pipelines would then be cut in approximate 100-foot sections and removed. Larger sections could be removed dependent upon pipe integrity, site conditions, and ship traffic. The applicant has determined that it is too risky to attempt to expose substantial lengths of pipeline in the event ship traffic requires operations to halt and allow ship traffic to pass. For Pipeline 1 (6" pipe) it is anticipated that approximately 1,800 linear feet will be removed via the dredging method. For Pipeline 2 (12" pipe) it is anticipated that it will be necessary to remove approximately 1,500 feet via the dredging method. The applicant's plan was developed with the intent of minimizing risks to the applicant's personnel and equipment, damage to passing ships, and to limit unnecessary delays and/or closures of traffic through the ship channel. Pelican Island's western lobe is the preferred DMPA. Pelican Island was selected primarily due to the proximity to both pipelines. Due to significant ship traffic within the area, to minimize interruptions to Port traffic, minimizing the length of the dredge discharge pipelines inherently minimizes the safety risks to life and property. Other DMPAs in the area were examined and determined to be unsuitable to achieve the project's objectives. Pelican Island's western lobe does support a diverse estuarine wetland habitat along many of its tidal shorelines. The placement plan included consideration of avoidance of these wetland habitats. Additionally, the dredge disposal pipe route from the dredge area to the proposed Pelican Island placement area will be carefully selected to avoid all sensitive resources. Temporary pilings will be installed to ensure the dredge disposal pipeline remains in place and is not repositioned by the natural ebb and flow of currents or the increased water movement due

to passing vessels. Temporary pilings will be placed such that they avoid all sensitive resources and will be immediately removed upon project completion. Pilings will not be placed within the CCSC. Much of the western perimeter of the island is an approximate 8 to 10-foot bluff within the uplands on the island. The contractor will utilize naturally occurring high topographic areas to ensure material placement does not impact shoreline wetlands. The naturally occurring high land areas will also help to ensure there are no return effluents to the bay. The discharge pipe outfall will be situated to maximize placement and water flow into areas dominated by sandy soils with a low water table. This will allow infiltration of liquids into the sand. No discharge into wetlands or other waters of the United States will occur. The applicant is instructed by the Corps that pipeline removal or relocation is required by federal law. Therefore, not completing the project is not an option. Various construction methods for pipeline removal and dredge material placement were considered and rejected due to costs, safety, and/or logistical constraints. DCCI, the contractor, based upon prior experience indicated that pulling the pipeline is not a viable option for this project based upon their experience with pipeline removal at the nearby La Quinta Channel and at other locations. Due to the pipelines' age and environmental conditions, pipelines at La Quinta Channel frequently broke off during the pulling operation. Since CCSC has significantly more ship traffic, it is not feasible to risk the likelihood of delays and prolonged work within the ship channel vicinity. Several disposal site alternatives were considered. However, all were either environmentally unacceptable or located an impractical distance from the dredging areas.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00943. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 19-1318-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien, P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201901691

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: June 5, 2019



Official Notice to Vessel Owner/Operators

(Pursuant to §40.254, Tex. Nat. Res. Code)

This preliminary report and notice of violation was issued by the Deputy Director, Oil Spill Prevention and Response Division (OSPR), Texas General Land Office, on May 29, 2019.

PRELIMINARY REPORT

Based on an investigation conducted by Texas General Land Office-Region 3 staff on May 13, 2019, the Commissioner of the General Land Office (GLO), has determined that an approximately 24-foot-long fiberglass hulled recreational vessel identified as TPWD Vessel Registration Number TX 2338 ZN; (GLO Tracking Number 3-1827) is in a wrecked, derelict and substantially dismantled condition without the consent of the commissioner. The vessel is aground and located in Corpus Christi Bay in Nueces County, Texas. The vessel is specifically located at Latitude 27° 40' 55" N, Longitude 97° 13' 48" W. The current owner of record has been identified. That vessel registration

expires in May 2021. The GLO determined that pursuant to OSPRA §40.254(b)(2)(B), that the vessel has intrinsic value. Finally, the GLO determined that, because of the vessel's location and condition, it is a threat to the environment, a navigational hazard, and a threat to public health, safety and welfare.

Violation

YOU ARE HEREBY GIVEN NOTICE, pursuant to the provisions of §40.254 of the Texas Natural Resources Code, (OSPRA) that you are in violation of OSPRA §40.108(a) that prohibits a person from leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition, and the Commissioner determines the vessel is involved in an actual or unauthorized discharge of oil, a threat to the public health, safety, and welfare, or a hazard to the environment or navigation. The Commissioner is authorized by OSPRA §40.108(b) to dispose of or contract for the disposal of any vessel described in §40.108(a).

Recommendation

The Commissioner recommends that the vessel be removed from Texas coastal waters and disposed of in accordance with OSPRA §40.108.

The owner or operator of this vessel can request a hearing to contest the violation and the removal and disposal of the vessel. If the owner or operator wants to request a hearing, a request in writing must be made within twenty (20) days of this notice being posted on the vessel. The request for a hearing must be sent to: Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, Texas 78711. Failure to request a hearing may result in the removal and disposal of the vessel by the TGLO. If the TGLO removes and disposes of the vessel, the TGLO has authority under TNRC §40.108(b) to recover the costs of removal and disposal from the vessel's owner or operator.

TRD-201901689

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: June 5, 2019



Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendments, under Title XIX of the Social Security Act, effective July 1, 2019

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective July 1, 2019.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Physicians and Other Practitioners; and

Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

The proposed amendments are estimated to result in an annual aggregate expenditure of \$1,784,286 for federal fiscal year (FFY) 2019, consisting of \$1,038,276 in federal funds and \$746,010 in state general revenue. For FFY 2020, the estimated annual aggregate expenditure is \$7,177,795, consisting of \$4,370,559 in federal funds and \$2,807,236 in state general revenue. For FFY 2021, the estimated annual aggregate

expenditure is \$7,245,302, consisting of \$4,497,883 in federal funds and \$2,747,419 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at: <http://rad.hhs.texas.gov/rate-packets>.

Rate Hearing. A rate hearing was conducted on May 22, 2019, at 1:30 p.m. in Austin, Texas. Information about the proposed rate change(s) and the hearing can be found in the April 19, 2019, issue of the *Texas Register* at pages 2086-2088. These can be found at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendments. Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of the Texas Health and Human Services Commission.

Written Comments. Written comments about the proposed amendments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

Brown-Healty Building

4900 North Lamar Blvd

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Rate Analysis at (512) 730-7475

Email

RADAcuteCare@hhsc.state.tx.us

TRD-201901681

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 4, 2019



Public Notice - Texas State Plan for Medical Assistance Amendments, under Title XIX of the Social Security Act, effective August 1, 2019

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective August 1, 2019.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS).

The proposed amendments are estimated to result in an annual aggregate expenditure of \$41,576 for federal fiscal year (FFY) 2019, consisting of \$24,193 in federal funds and \$17,383 in state general revenue. For FFY 2020, the estimated annual aggregate expenditure is \$251,126, consisting of \$152,911 in federal funds and \$98,215 in state general revenue. For FFY 2021, the estimated annual aggregate expenditure is \$253,736, consisting of \$157,519 in federal funds and \$96,217 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at: <http://rad.hhs.texas.gov/rate-packets>.

Rate Hearing. A rate hearing was conducted on May 22, 2019, at 1:30 p.m. in Austin, Texas. Information about the proposed rate change(s) and the hearing can be found in the April 19, 2019, issue of the *Texas Register* at pages 2086 - 2088. These can be found at <http://www.sos.state.tx.us/texreg/index.shtml>.

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Written Comments. Written comments about the proposed amendments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 Brown-Heatly Building 4900 North Lamar Blvd Austin, Texas 78751. Phone number for package delivery: (512) 730-7401

Fax Attention: Rate Analysis at (512) 730-7475

Email RADAcuteCare@hhsc.state.tx.us

TRD-201901682

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 4, 2019



Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of May, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Throughout TX	Lone Star Geotechnical & Testing Lab. Inc.	L07000	Houston	00	05/07/19
Tyler	University of Texas at Tyler	L06999	Tyler	00	05/06/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Alvin	Ascend Performance Materials Texas L.L.C.	L06630	Alvin	05	05/13/19
Arlington	Texas Health Arlington Memorial Hospital	L02217	Arlington	118	05/07/19
Austin	Austin Radiological Association	L00545	Austin	220	05/01/19
Austin	ARA St. David's Imaging L.P.	L05862	Austin	95	05/01/19
Corpus Christi	Bay Area Healthcare Group Ltd. dba Corpus Christi Medical Center	L04723	Corpus Christi	62	05/07/19
Dallas	Columbia Hospital at Medical City Dallas Subsidiary L.P. dba Medical City Dallas Hospital	L01976	Dallas	225	05/01/19
Dallas	Texas Health Presbyterian Hospital Dallas	L04288	Dallas	39	05/13/19
Dallas	Cardinal Health	L05610	Dallas	44	05/10/19
Dallas	Texas Health Physicians Group dba Texas Health Presbyterian Heart and Vascular Group	L06578	Dallas	06	05/06/19
Gonzales	Gonzales Healthcare System dba Memorial Hospital	L03473	Gonzales	20	05/03/19
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	177	05/03/19
Houston	Teas Children's Hospital	L04612	Houston	77	05/09/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Houston	Cardinal Health	L05536	Houston	63	05/10/19
Houston	Sheikh Ejaz Ahmed M.D.	L06021	Houston	03	05/08/19
Kerrville	Methodist Physician Practices P.L.L.C.	L06635	Kerrville	03	05/15/19
La Porte	Bayport Polymers L.L.C. dba Bay-Pol L.L.C.	L06922	La Porte	04	05/08/19
Mansfield	Healthscan Imaging L.L.C.	L06856	Mansfield	09	05/08/19
McKinney	Texas Oncology P.A. dba Texas Oncology	L06947	McKinney	04	05/07/19
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	167	05/13/19
Texas City	Blanchard Refining Company L.L.C.	L06526	Texas City	17	05/14/19
Throughout TX	Alvarado	L06839	Alvarado	03	05/06/19
Throughout TX	Texas Department of Transportation	L00197	Austin	192	05/02/19
Throughout TX	The University of Texas at Austin	L00485	Austin	95	05/06/19
Throughout TX	Insight Health Corp.	L05504	Austin	25	05/03/19
Throughout TX	Bonded Inspections Inc.	L00693	Dallas	97	05/15/19
Throughout TX	Mistras Group Inc.	L06369	Deer Park	28	05/09/19
Throughout TX	ECM International Inc.	L06987	El Paso	01	05/15/19
Throughout TX	Professional Service Industries	L04944	Harlingen	13	05/06/19
Throughout TX	Texas Gamma Ray L.L.C. dba TGR Industrial Services	L05561	Houston	120	05/14/19
Throughout TX	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	107	05/08/19
Throughout TX	Acuren Inspection Inc.	L01774	La Porte	296	05/02/19
Throughout TX	Advanced Inspection Technologies L.L.C.	L06608	La Porte	08	05/02/19
Throughout TX	Beyond Engineering and Testing L.L.C.	L06924	Round Rock	03	05/07/19
Throughout TX	Oilpatch NDT L.L.C.	L06718	Seabrook	13	05/02/19
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	159	05/09/19

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Brownwood	3M Company	L00918	Brownwood	50	05/15/19
Cleveland	Premier Cardiovascular Consultants P.C.	L06179	Cleveland	04	05/07/19
Pasadena	CHCA Bayshore L.P. dba HCA Houston Healthcare Southeast	L00153	Pasadena	105	05/14/19
Throughout TX	Alliance Geotechnical Group Inc.	L05314	Dallas	37	05/08/19
Throughout TX	Earthco L.L.C.	L06213	Harlingen	06	05/08/19

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	Pro Oilfield Services L.L.C.	L06518	Houston	02	05/02/19
Throughout TX	Lone Star Testing Services L.P. dba Lone Star Testing Laboratories	L04013	Humble	17	05/15/19

TRD-201901602
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: May 30, 2019

◆ ◆ ◆
Texas Department of Insurance
 Company Licensing

Application to do business in the state of Texas for Southern Underwriters Insurance Company, a foreign fire and/or casualty company. The home office is in Oklahoma City, Oklahoma.

Application to do business in the state of Texas for Midwest Family Advantage Insurance Company, a foreign fire and/or casualty company. The home office is in West Des Moines, Iowa.

Application to do business in the state of Texas for Midwest Family Mutual Insurance Company, a foreign fire and/or casualty company. The home office is in West Des Moines, Iowa.

Application for The Ohio State Life Insurance Company, a domestic life, accident and/or health company, to change its name to NexAnnuity Life Insurance Company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Christian Hertzberg, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201901690
James Person
Interim General Counsel
Texas Department of Insurance
Filed: June 5, 2019



Texas Lottery Commission

Scratch Ticket Game Number 2152 "50X Fast Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2152 is "50X FAST CASH". The play style is "match 3 of X".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2152 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2152.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: BINOCULARS SYMBOL, CAP SYMBOL, CLOCK SYMBOL, FIRE EXTINGUISHER SYMBOL, FLAG SYMBOL, FUEL SYMBOL, GLOVE SYMBOL, HELMET SYMBOL, KEY SYMBOL, STREET LIGHTS SYMBOL, MEDAL SYMBOL, MEGAPHONE SYMBOL, GASOLINE PUMP SYMBOL, SUN SYMBOL, TIRE SYMBOL, TROPHY SYMBOL, WATER BOTTLE SYMBOL, WRENCH SYMBOL, RACE CAR SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2152 - 1.2D

PLAY SYMBOL	CAPTION
BINOCULARS SYMBOL	BINOC
CAP SYMBOL	CAP
CLOCK SYMBOL	CLOCK
FIRE EXTINGUISHER SYMBOL	FIRE EXT
FLAG SYMBOL	FLAG
FUEL SYMBOL	FUEL
GLOVE SYMBOL	GLOVE
HELMET SYMBOL	HELMET
KEY SYMBOL	KEY
STREET LIGHTS SYMBOL	LIGHTS
MEDAL SYMBOL	MEDAL
MEGAPHONE SYMBOL	MEGAPHON
GASOLINE PUMP SYMBOL	PUMP
SUN SYMBOL	SUN
TIRE SYMBOL	TIRE
TROPHY SYMBOL	TROPHY
WATER BOTTLE SYMBOL	WATER
WRENCH SYMBOL	WRENCH
RACE CAR SYMBOL	WIN
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten

(10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2152), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2152-0000001-001.

H. Pack - A Pack of "50X FAST CASH" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "50X FAST CASH" Scratch Ticket Game No. 2152.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "50X FAST CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-four (64) Play Symbols. If a player reveals 3 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If a player reveals 2 matching Play Symbols and a "RACE CAR" Play Symbol in the same GAME, the player wins 2X the PRIZE for that GAME. If a player reveals 2 "RACE CAR" Play Symbols in the same GAME, the player wins 5X the PRIZE for that GAME. If a player reveals 3 "RACE CAR" Play Symbols in the same GAME, the player wins 50X the PRIZE for that GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket Game.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-four (64) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-four (64) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the sixty-four (64) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-four (64) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to sixteen (16) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. There will be no matching non-winning GAMES on a Ticket. GAMES are considered matching if they have the same Play Symbols in the same spots.

E. No three (3) or more matching non-winning Play Symbols will appear in adjacent positions diagonally or in a column.

F. The "RACE CAR" (WIN) Play Symbol will only appear on winning Tickets and will appear on winning GAMES as dictated by the prize structure.

G. No more than two (2) matching non-winning Play Symbols will appear in one (1) GAME.

H. Non-winning Prize Symbols will never appear more than three (3) times.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "50X FAST CASH" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "50X FAST CASH" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "50X FAST CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "50X FAST CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "50X FAST CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "50X FAST CASH" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the

Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,520,000 Scratch Tickets in Scratch Ticket Game No. 2152. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2152 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	809,600	6.82
\$10	699,200	7.89
\$20	147,200	37.50
\$50	34,500	160.00
\$100	10,120	545.45
\$500	184	30,000.00
\$1,000	50	110,400.00
\$100,000	4	1,380,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.25. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2152 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2152, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201901647
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 3, 2019



Scratch Ticket Game Number 2175 "\$100,000 Frenzy"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2175 is "\$100,000 FRENZY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2175 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2175.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, BAR SYMBOL, JACKPOT SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200, \$500, \$1,000, \$5,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2175 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV

38	TRET
39	TRNI
40	FRTY
BAR SYMBOL	WIN
JACKPOT SYMBOL	WINX5
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2175), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2175-0000001-001.

H. Pack - A Pack of the "\$100,000 FRENZY" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$100,000 FRENZY" Scratch Ticket Game No. 2175.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back

of each Scratch Ticket. A prize winner in the "\$100,000 FRENZY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-seven (67) Play Symbols. GAME 1 (TICKET FRONT):: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "BAR" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "JACKPOT" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. GAME 2 (TICKET BACK): If the player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "BAR" Play Symbol, the player wins the PRIZE for that symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly sixty-seven (67) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly sixty-seven (67) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the sixty-seven (67) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the sixty-seven (67) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: The top Prize Symbol will appear on the front of every Ticket unless restricted by other parameters, play action or prize structure.

C. GENERAL: The WINNING NUMBERS and YOUR NUMBERS Play Symbols on the Ticket front will not match any of the WINNING NUMBERS and YOUR NUMBERS Play Symbols on the Ticket back, unless restricted by other parameters, play action or prize structure.

D. KEY NUMBER MATCH - TICKET FRONT: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and \$5).

E. KEY NUMBER MATCH - TICKET FRONT: No matching non-winning YOUR NUMBERS Play Symbols in this game.

F. KEY NUMBER MATCH - TICKET FRONT: No matching WINNING NUMBERS Play Symbols in this game.

G. KEY NUMBER MATCH - TICKET FRONT: A non-winning Prize Symbol will never match a winning Prize Symbol in this game.

H. KEY NUMBER MATCH - TICKET FRONT: A Ticket may have up to four (4) matching non-winning Prize Symbols, in this game, unless restricted by other parameters, play action or prize structure.

I. KEY NUMBER MATCH - TICKET FRONT: The "JACKPOT" (WINX5) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

J. KEY NUMBER MATCH - TICKET BACK: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and \$5).

K. KEY NUMBER MATCH - TICKET BACK: No matching non-winning YOUR NUMBERS Play Symbols in this game.

L. KEY NUMBER MATCH - TICKET BACK: No matching WINNING NUMBERS Play Symbols in this game.

M. KEY NUMBER MATCH - TICKET BACK: A non-winning Prize Symbol will never match a winning Prize Symbol in this game.

N. KEY NUMBER MATCH - TICKET BACK: A Ticket may have up to two (2) matching non-winning Prize Symbols, in this game, unless restricted by other parameters, play action or prize structure.

O. KEY NUMBER MATCH - TICKET BACK: The "BAR" (WIN) Play Symbol may appear multiple times on intended winning Tickets in this game, unless restricted by other parameters, play action or prize structure.

P. KEY NUMBER MATCH - TICKET BACK: No win(s) will appear in this game unless there is at least one (1) win in the Key Number Match (ticket front) game.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$100,000 FRENZY" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not

validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$100,000 FRENZY" Scratch Ticket Game prize of \$1,000, \$5,000 or \$100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$100,000 FRENZY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$100,000 FRENZY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$100,000 FRENZY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2175. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2175 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	802,400	8.82
\$10	566,400	12.50
\$20	141,600	50.00
\$25	88,500	80.00
\$50	88,500	80.00
\$100	23,600	300.00
\$200	3,894	1,818.18
\$500	1,239	5,714.29
\$1,000	531	13,333.33
\$5,000	15	472,000.00
\$100,000	6	1,180,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.12. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2175 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2175, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201901692
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 5, 2019



Scratch Ticket Game Number 2224 "\$250,000 50X Cashword"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2224 is "\$250,000 50X CASHWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2224 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2224.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, BELL SYMBOL, COIN SYMBOL, GOLD BAR SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL and POT OF GOLD SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2224 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
BLACKENED SQUARE SYMBOL	
BELL SYMBOL	WINX1
COIN SYMBOL	WINX2
GOLD BAR SYMBOL	WINX3
MONEY BAG SYMBOL	WINX5
STACK OF BILLS SYMBOL	WINX10
POT OF GOLD SYMBOL	WINX50

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2224), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2224-000001-001.

H. Pack - A Pack of "\$250,000 50X CASHWORD" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket, or Ticket - Texas Lottery "\$250,000 50X CASHWORD" Scratch Ticket Game No. 2224.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly 312 (three hundred twelve) Play Symbols. A prize winner in the "\$250,000 50X CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose all of the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in GAME 1, GAME 2 and GAME 3 that exactly match the YOUR 20 LETTERS Play Symbols. If the player has scratched at least 2 complete WORDS within a GAME, the player wins the prize found in the corresponding PRIZE LEGEND. WORDS revealed in one GAME cannot be combined with WORDS revealed in another GAME. Each GAME is played separately. Only one prize paid per GAME. Only letters within the same GAME that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least three letters. GAME 1 and GAME 2 can win by revealing 2 to 11 complete WORDS on each GAME. GAME 3 can win by revealing 2 to 9 complete WORDS. MULTIPLIER BONUS: The player must scratch the MULTIPLIER SYMBOL. The player multiplies the total prize won in GAMES 1, 2 and 3 by the MULTIPLIER SYMBOL found in the legend to win that amount. Revealing a BELL SYMBOL (WINX1) does not multiply winnings in any GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

- A. To be a valid Scratch Ticket, all of the following requirements must be met:
 1. Exactly three hundred twelve (312) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
 2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo games do not typically have Play Symbol Captions;
 3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The Scratch Ticket shall be intact;
 6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
 8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
 9. The Scratch Ticket must not be counterfeit in whole or in part;
 10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The Scratch Ticket must be complete and not miscut, and have exactly three hundred twelve (312) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
 14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
 15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
 16. Each of the three hundred twelve (312) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the three hundred twelve (312) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: There is no correlation between any exposed data on a Ticket and its status as a winner or non-winner.

C. CROSSWORD GAMES: Each grid from GAME 1 and GAME 2 will contain exactly the same number of letters.

D. CROSSWORD GAMES: Each grid from GAME 1 and GAME 2 will contain exactly the same number of words.

E. CROSSWORD GAMES: No matching words on a Ticket.

F. CROSSWORD GAMES: All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v 2.0, dated January 31, 2019.

G. CROSSWORD GAMES: All words will contain a minimum of three (3) letters.

H. CROSSWORD GAMES: All words will contain a maximum of nine (9) letters.

I. CROSSWORD GAMES: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are considered to be A, E, I, O, U.

J. CROSSWORD GAMES: No consonant will appear more than nine (9) times, and no vowel will appear more than fourteen (14) times in GAME 1 and GAME 2.

K. CROSSWORD GAMES: No consonant will appear more than seven (7) times, no vowel will appear more than ten (10) times in GAME 3.

L. CROSSWORD GAMES: No matching Play Symbols in the YOUR 20 LETTERS play area.

M. CROSSWORD GAMES: At least fifteen (15) of the letters in the YOUR 20 LETTERS play area will open at least one (1) letter in GAME 1 (11x11), GAME 2 (11x11) and GAME 3 (7x7) crossword grids combinations.

N. CROSSWORD GAMES: The presence or absence of any letter or combination of letters in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

O. CROSSWORD GAMES: Words from the TEXAS REJECTED WORD LIST v.2.3, dated December 4, 2017, will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

P. CROSSWORD GAMES: On Non-Winning Tickets, there will be one (1) completed word in GAME 1 and one (1) completed word in GAME 2.

Q. CROSSWORD GAMES: There will be a random distribution of all Play Symbols on the Ticket, unless restricted by other parameters, play action or prize structure.

R. CROSSWORD GAMES: GAME 1 and GAME 2 will have no more than eleven (11) complete words per grid.

S. CROSSWORD GAMES: GAME 3 will have no more than nine (9) complete words.

T. CROSSWORD GAMES: A Ticket can only win one (1) time per GAME and a total of up to three (3) times per Ticket in accordance with the approved prize structure.

U. CROSSWORD GAMES: Each Ticket in a Pack will have unique GAMES.

V. MULTIPLIER BONUS: The MULTIPLIER BONUS Play Symbols of "BELL" (WINX1), "COIN" (WINX2), "GOLD BAR" (WINX3), "MONEY BAG" (WINX5), "STACK OF BILLS" (WINX10) and "POT OF GOLD" (WINX50) will only be used on winning Tickets, as dictated by the prize structure.

W. MULTIPLIER BONUS: Tickets that do not win in the "MULTIPLIER BONUS" play area will display the "BELL" (WINX1) MULTIPLIER BONUS Play Symbol.

X. MULTIPLIER BONUS: Revealing a "BELL" (WINX1) MULTIPLIER BONUS Play Symbol does not multiply winnings in any GAME.

Y. MULTIPLIER BONUS: Tickets that do not win in GAME 1, GAME 2, or GAME 3 will use the "BELL" (WINX1) MULTIPLIER BONUS Play Symbol in the "MULTIPLIER BONUS" play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$250,000 50X CASHWORD" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$80.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$80.00, \$100, \$200 or \$500 Scratch Ticket Game Prize. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$250,000 50X CASHWORD" Scratch Ticket Game prize of \$1,000, \$10,000 or \$250,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event

that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$250,000 50X CASHWORD" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$250,000 50X

CASHWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$250,000 50X CASHWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 12,000,000 Scratch Tickets in Scratch Ticket Game No. 2224. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2224 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	1,320,000	9.09
\$20	840,000	14.29
\$30	840,000	14.29
\$50	250,000	48.00
\$80	45,000	266.67
\$100	67,500	177.78
\$200	10,500	1,142.86
\$500	2,000	6,000.00
\$1,000	1,200	10,000.00
\$10,000	23	521,739.13
\$250,000	6	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.55. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2224 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2224, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201901648
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: June 3, 2019



North Central Texas Council of Governments

Clean Fleets North Texas 2019 Call for Projects

The North Central Texas Council of Governments (NCTCOG), under the Environmental Protection Agency's (EPA) Clean Diesel Funding Assistance Program, plans to offer approximately \$1.2 million in grant funding for replacement of existing diesel-powered heavy-duty vehicles or equipment operating in the Dallas-Fort Worth (DFW) ten-county ozone nonattainment region. Eligible projects may receive federal funds for up to 45 percent of total project costs for electric replacements, up to 35 percent of total project costs for replacements with engines certified to meet the California Air Resources Board optional low oxides of nitrogen emission standards, and up to 25 percent of project costs for replacements powered by other fuels certified to 2018 EPA emission standards. Selected partners will be responsible for: following all applicable federal procurement guidelines; meeting cost-share requirements; and granting appropriate security interest to NCTCOG for all grant funded vehicles and/or equipment. NCTCOG may consider applications received in response to this solicitation for future funding opportunities or programs. More information and application materials for this Call for Projects can be obtained online at www.nctcog.org/aqfunding.

Application materials must be received no later than 5:00 p.m., CDT, on Friday, September 6, 2019, to Nancy Luong, Air Quality Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011.

NCTCOG encourages participation by minority business enterprises and women's business enterprises, and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201901656
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 4, 2019

◆ ◆ ◆
Texas Department of Transportation

Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department), may enter into, in each fiscal year, up to three design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of \$150 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code §223.245 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice of such issuance in the *Texas Register*. The Texas Transportation Commission (commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I relating to design-build contracts (the "rules"). The enabling legislation, as well as the rules, govern the submission and processing of qualifications submittals, and provide for the issuance of a request for qualifications that sets forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary.

The commission has authorized the issuance of a request for qualifications ("RFQ") to design and construct the 10/69 Interchanges Project ("Project") in Jefferson County, Texas. The Project includes reconstructing and expanding I-10 and US 69 where they converge in the City of Beaumont. The Project would widen the existing I-10 from Walden Road (County Road 131) to 7th Street. Between the Cardinal Drive and Eastex Freeway interchanges, the roadway would be widened in each direction from four lanes to five lanes. The roadway approaches to the Cardinal Drive and Eastex Freeway interchanges on I-10 and US 69 would be widened in each direction from two lanes to three lanes. The Project also includes new frontage roads for continuity throughout the limits, relocating I-10 ramps, and constructing two-lane direct connectors in each direction where I-10 and US 69 converge within the Project limits. These changes will upgrade the existing facility to alleviate congestion, enhance connectivity and mobility, and address safety concerns.

The Project has an estimated design-build cost of \$500 million.

Through this notice, the department is seeking qualifications submittals ("QS") from teams interested in entering into a design-build contract. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to the negotiation, award, and execution of a design-build contract. The department will accept for consideration any QS received in accordance with the enabling legislation, the rules, and the RFQ, on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and evaluating the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals ("RFP") to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract for the Project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: project qualifications and experience, statement of technical approach, and

safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on June 14, 2019. Copies of the RFQ will be available at the Texas Department of Transportation, 7600 Chevy Chase Drive, Building 2, Suite 400, Austin, Texas 78752, or at the following website:

<https://www.txdot.gov/inside-txdot/division/debt/strategic-projects/alternative-delivery/10-69-interchanges/rfq.html>

QSs will be due by 12:00 noon Central Time on August 15, 2019, at the address specified in the RFQ.

TRD-201901688
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 5, 2019

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Texas Water Development Board

Applications for May 2019

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #62854, a request from the City of Austin, 625 East 10th Street, Suite 500, Austin, Texas 78701-2612, received on May 8, 2019, for \$67,830,000 in financial assistance from the Drinking Water State Revolving Fund, for replacement of the North Austin reservoir and pump station, replace the existing electrical substation that feeds power to the Ullrich Water Treatment Plant low service pump station.

Project ID #73843, a request from the City of Austin, 625 East 10th Street, Suite 500, Austin, Texas 78701-2612, received on May 8, 2019, for \$53,000,000 in financial assistance from the Clean Water State Revolving Fund, for the Walnut Creek wastewater treatment plant sludge thickener rehabilitation project, the Walnut Creek wastewater treatment plant pumping system improvements project, and the South Austin regional wastewater treatment plant electric substation replacement project.

Project ID #51001, a request from the Upper Trinity Regional Water District, 900 North Kealy Street, Lewisville, Texas 75067, received on May 23, 2019, for \$45,500,000 in financial assistance, from the State Water Implementation Fund for Texas, for Lake Ralph Hall constructing an earthen dam, an intake/pump station, a state highway bridge over the lake, relocation of various state and county roads, utility relocations, a raw water transmission pipeline, a balancing reservoir, environmental and cultural resources mitigation, and reservoir and administration/support facilities.

Project ID #62885, a request from the City of Cotulla, 117 North Front Street, Cotulla, Texas 78014-2259, received on May 23, 2019, for \$2,900,000 in financial assistance from the Drinking Water State Revolving Fund for the design and construction of well number 9 due to failure and rehabilitation of additional wells due to water table loss/pump breakage.

Project ID #51064, a request from Gulf Coast Water Authority, 3630 Highway 1765, Texas City, Texas 77591-4824, received on May 23, 2019, for \$46,750,000 in financial assistance, from the State Water Implementation Fund for Texas for the City's southeast transmission line, a multi-year, multi-phase project that will include transmission of sur-

face water from the City of Houston's southeast water purification plant to the City of League City's Highway 3 pump station.

Project ID #51065, a request from Riverbend Water Resources District, 228 Texas Avenue, Suite A, New Boston, Texas 75570, received on May 24, 2019, for \$200,000,000 in financial assistance from the State Water Implementation Fund for Texas for construction of a new regional water system.

TRD-201901654
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: June 4, 2019



TEXAS



Welcome
to
Texas. 🤠

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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