

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

#### DIVISION 35. REIMBURSEMENT ADJUSTMENTS FOR POTENTIALLY PREVENTABLE EVENTS

##### 1 TAC §354.1445, §354.1446

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1445, concerning Potentially Preventable Readmissions; and §354.1446, concerning Potentially Preventable Complications.

##### BACKGROUND AND JUSTIFICATION

Texas Government Code §536.151 and §536.152 require HHSC to implement a reporting process and reimbursement adjustments to hospitals based on performance of potentially preventable readmissions (PPRs) and potentially preventable complications (PPCs). HHSC first adopted §354.1445 and §354.1446 to implement the statutory directive, at least with respect to reimbursement reductions, in 2013. See 38 TexReg 2315 (2013), *amended by* 39 TexReg 6403 (2014).

HHSC proposes to amend these two rules for three reasons.

First, the amendments clarify a hospital's ability to request its underlying data used in HHSC's analysis that determines penalties and incentive payments for the hospital. The proposed amendments specify the additional information a hospital can expect in the underlying data, including readmission data on other hospitals.

Each year, hospitals are provided a confidential report based on their performance of PPRs and PPCs. The report states that hospitals may request the underlying data from HHSC via e-mail. In regards to PPRs, hospitals are held accountable for readmissions to their own hospital and to different hospitals within the 15-day readmission window. Currently, the underlying data does not separately identify the names of other hospitals where readmissions occurred. In a recent survey from HHSC, hospitals indicated that this information, including patient-level identifiers, is crucial to identify opportunities to close gaps in care, assist with care coordination, identify trends, foster collaborative efforts in

their communities, develop innovative methods for prevention, and reduce readmission rates.

Second, the amendments identify a methodology for incentives for HHSC-defined safety-net hospitals. The 2016-2017 General Appropriations Act, House Bill 1, 84th Legislature, Regular Session, 2015 (Article II, Special Provisions Section 59(b)), directs HHSC to provide incentive payments to safety-net hospitals in the amount of \$150,378,593 (all funds) in fiscal year 2016 and \$148,641,716 (all funds) in fiscal year 2017. It requires HHSC to establish a program to use ten percent of these additionally appropriated funds to distribute to these hospitals based on quality metrics. Total reimbursement for each hospital must not exceed its hospital-specific limit, but HHSC must expend ten percent of these funds to provide additional increases to safety-net that exceed existing quality metrics, which may result in exceeding the hospital-specific limit. To the extent possible, HHSC must ensure that any funds included in Medicaid managed care capitation rates are distributed by the managed care organizations to the hospitals.

Third, the amendments further refine the methodology, such as clarifying methodology, definitions, and the Present on Admission screening adjustment described in §354.1446.

##### SECTION-BY-SECTION SUMMARY

Proposed §354.1445(b) adds definitions for the terms "managed care organization" and "safety-net hospital" and makes nonsubstantive corrections.

Proposed §354.1445(c) allows use of weighting factors other than cost of PPR in calculating the PPR actual-to-expected ratio.

Proposed §354.1445(e)(1) and (2) describes how a hospital may request the underlying data used to analyze the hospital's performance and the information the underlying data contains.

Proposed §354.1445(h) describes the methodology for targeted incentive payments to safety net hospitals.

Proposed §354.1446(b) adds definitions for the terms "managed care organization" and "safety-net hospital."

Proposed §354.1446(e)(1) and (2) describes how a hospital may request the underlying data used to analyze the hospital's performance and the information the underlying data contains.

Proposed §354.1446(g)(4) omits the start date of the Present on Admission (POA) adjustment and changes HHSC's use of the adjustment criteria from mandatory to optional.

Proposed §354.1446(h) describes the methodology for targeted incentive payments to safety net hospitals.

##### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be a fiscal impact to state government of \$6,434,700 General Revenue (GR) (\$15,037,859 All Funds (AF)) for State Fiscal Year (SFY) 2016; \$6,434,700 GR (\$14,864,172 AF) for SFY 2017; and \$6,434,700 GR (\$14,850,450 AF) for each year from SFY 2018 through SFY 2020. Costs and revenues of local governments will not be affected.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no effect on small businesses or micro-businesses to comply with the amended rules, as there are no affected hospitals that qualify as small businesses or micro-businesses.

#### PUBLIC BENEFIT

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be increased funds for hospitals that achieve a high quality of care. Hospitals will also be able to use the underlying data to identify opportunities to close gaps in care and assist with care coordination.

Ms. Rymal has also determined that for each of the first five years the rules are in effect, there will be no costs to persons required to comply with the rules as proposed. There is no anticipated negative impact on a local economy.

#### REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Janna Doan, Program Specialist, 6330 Highway 290 East, Suite 100, Austin, Texas 78723; by fax to (512) 380-4380; or by e-mail to [Janna.Doan@hhsc.state.tx.us](mailto:Janna.Doan@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

#### PUBLIC HEARING

A public hearing is scheduled from 11:00 a.m. to 12:00 p.m. on February 19, 2016, in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §536.152, which provides HHSC with the authority to adjust payments to hospitals that exceed quality measures. In addition, the rules are proposed to implement Texas Government Code §536.151 and §536.152, which provide for the collection and reporting of PPR and PPC information and for reimbursement adjustments.

The proposed amendments affect Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### §354.1445. *Potentially Preventable Readmissions.*

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to meet outcome and process measures relative to all Texas Medicaid and CHIP hospitals regarding the rates of potentially preventable events.

#### (b) Definitions.

(1) Actual-to-Expected Ratio--A ratio that measures the impact of potentially preventable readmissions (PPRs) by deriving an actual hospital rate compared to an expected hospital rate based on a methodology defined by HHSC. HHSC may use cost of PPR as a factor in weighting PPRs and in calculating PPR Actual-to-Expected Ratio.

(2) Adjustment time period--The state fiscal year (September through August) that a hospital's claims are adjusted in accordance with subsection (f) of this section. Adjustments will be done on an annual basis.

(3) All Patient Refined Diagnosis[-]Related Group (APR[-]DRG)--A diagnosis and procedure code classification system for inpatient services.

(4) Candidate admission--An admission that is at risk of a PPR.

(5) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period and measured using APR DRG [all patient refined diagnosis related group (APR-DRG)] or its replacement classification system, severity of illness, patient age, and the presence of a major mental health or substance abuse comorbidity.

(6) Claims during the reporting time period--Includes Medicaid traditional fee-for-service (FFS), Children's Health Insurance Program or CHIP, and managed care inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting period;

(B) were adjudicated and approved for payment during the reporting period and the six-month grace period that immediately followed, except for claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not claims for individuals classified as undocumented immigrants; and

(E) were not subject to other exclusions as determined by HHSC.

(7) Children's Health Insurance Program or CHIP or Program--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. Chapter 7, Title XXI) and Chapters 62 and 63 of the Texas Health and Safety Code.

(8) Clinically related--A requirement that the underlying reason for readmission be plausibly related to the care rendered during or immediately following the initial admission. A clinically related readmission occurs within a specified readmission time interval resulting from the process of care and treatment during the initial admission or from a lack of post admission follow-up, but not from unrelated events occurring after the initial admission.

(9) HHSC--The Health and Human Services Commission or its designee.

(10) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Texas Health and Safety Code, including a general or special hospital as defined by §241.003, Texas Health and Safety Code.

(11) Initial admission--A candidate admission followed by one or more readmissions that are clinically related.

(12) Managed care organization (MCO)--A provider or organization under contract with HHSC to provide services to Medicaid or CHIP recipients using a health care delivery system or dental services delivery system in which provider or organization coordinates the patient's overall care.

(13) [~~42~~] Medicaid program--The medical assistance program established under Chapter 32, Texas Human Resources Code.

(14) [~~43~~] Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of these events, which are more fully defined in §354.1070 of this title.

(15) [~~44~~] Potentially preventable readmission (PPR)--A return hospitalization of a person within a period specified by HHSC that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided;

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(D) another condition or procedure of a similar nature, as determined by HHSC.

(16) [~~45~~] Readmission chain--A sequence of PPRs that are all clinically related to the Initial Admission. A readmission chain may contain an Initial Admission and only one PPR, or may contain multiple PPRs following the Initial Admission.

(17) [~~46~~] Reporting time period--The period of time that includes hospital claims that are assessed for PPRs. This may be a state fiscal year (September through August) or other specified time frame as determined by HHSC. PPR Reports will consist of statewide and hospital-specific reports and will be done at least on an annual basis, using the most complete data period available to HHSC.

(18) Safety-net hospital--As defined in §355.8052 of this title (relating to Inpatient Hospital Reimbursement).

(c) Calculating a PPR rate. Using claims during the reporting time period and HHSC-designated software and methodology, HHSC calculates an actual PPR rate and an expected PPR rate for each hospital in the analysis. The methodology for inclusion of hospitals in the analysis will be described in the statewide and hospital-specific reports. [HHSC may use cost of PPR as a factor in weighting PPRs, and in calculating PPR Actual-to-Expected Ratio.]

(1) The actual PPR rate is the number of readmission chains divided by the number of candidate admissions.

(2) The expected PPR rate is the expected number of readmission chains divided by the number of candidate admissions. The expected number of readmission chains is based on the hospital's case-mix relative to the case-mix of all hospitals included in the analysis during the reporting period.

(3) HHSC may weight PPRs based on expected resource use.

(d) Comparing the PPR performance of all hospitals included in analysis. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPR rates.

(e) Reporting results of PPR rate calculations. HHSC provides a confidential report to each hospital included in the analysis regarding the hospital's performance with respect to potentially preventable readmissions, including the PPR rates calculated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(1) A hospital may request the underlying data used in the analysis to generate the report via an email request to the HHSC email address found on the report.

(2) The underlying data contains patient-level identifiers, information on all hospitals where the readmissions occurred, and other information deemed relevant by HHSC.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPR ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of -1%;

(2) A hospital with an actual-to-expected PPR ratio greater than 1.25 is subject to a reimbursement adjustment of -2%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section will apply to all Medicaid fee-for-service claims, based on patient discharge date, for the adjustment time period after the confidential report on which the reimbursement adjustments are based is made available to hospitals.

(2) The reimbursement adjustments for a hospital will cease in the adjustment time period that is after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

(h) Targeted incentive payments for safety-net hospitals.

(1) HHSC determines annually whether a safety-net hospital may receive an incentive payment for performance on PPR incidence.

(2) The appropriated funds for the targeted incentive payments are split in half, 50 percent for PPRs and 50 percent for potentially preventable complications.

(3) The dataset used in the incentive analysis is the same as the dataset used in the PPR reimbursement adjustments.

(4) Hospitals that are eligible for a targeted incentive payment must meet the following requirements:

(A) be a safety-net hospital;

(B) have an actual-to-expected ratio of at least 10 percent lower than the statewide average (actual-to-expected ratio is less than or equal to 0.90);

(C) have not received a penalty for either PPRs or potentially preventable complications; and

(D) are not low-volume, as defined by HHSC.

(5) Calculation of targeted incentive payments.

(A) Calculate base allocation. Each eligible hospital is awarded a base allocation not to exceed \$100,000.

(B) Calculate variable allocation. Each eligible hospital is awarded a variable allocation, which is calculated from remaining funds after distribution of base allocations to all eligible hospitals. The variable allocation has the following components:

(i) Hospital size score. Each eligible hospital's size divided by the average size of the whole group of hospitals within each incentive pool. Size is calculated based on total inpatient facility claims paid to each eligible hospital. Each eligible hospital's size calculation is capped at 2.00.

(ii) Hospital Performance score. Each eligible hospital's performance divided by the average performance of the whole group of hospitals within each incentive pool. Performance is calculated by actual to expected ratio.

(iii) Composite score. Each eligible hospital receives a composite score, which is the hospital's size score multiplied by the hospital's performance score.

(iv) Each hospital's composite score divided by the sum of all eligible hospitals' composite scores is multiplied by the remaining incentive funds, after distribution of base allocations.

(C) Calculate final allocation: The final allocation to each eligible hospital is equal to the eligible hospital's base allocation plus the eligible hospital's variable allocation.

(6) Each eligible hospital's PPR incentive payment will be divided between FFS and MCO reimbursements based on the percentage of its total paid FFS and MCO Medicaid inpatient hospital reimbursements for the reporting time period accruing from FFS.

(7) PPR incentive payments may be made as lump sum payments or tied to particular claims or recipients, at HHSC's discretion.

(8) HHSC will post the methodology for calculating and distributing incentives on its public website.

(9) Targeted incentive payments for safety-net hospitals are not included in the calculation of a hospital's hospital-specific limit.

*§354.1446. Potentially Preventable Complications.*

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to achieve outcome and process measures relative to all Texas Medicaid and CHIP hospitals that address the rates of potentially preventable events.

(b) Definitions.

(1) Actual to Expected Ratio--The ratio of actual potentially preventable complications (PPCs) within an inpatient stay compared with expected PPCs within an inpatient stay, where the expected number depends on the all patient refined[-]diagnosis related group at the time of admission (APR[-]DRG or its replacement classification system) is adjusted for the patient's severity of illness. HHSC, at its discretion, determines the relative weights of PPCs when calculating the actual to expected ratio. Expected PPC results calculation is based on the statewide norms and is calculated from Medicaid traditional fee-for-service (FFS), Children's Health Insurance Program or CHIP, and, if available, managed care data.

(2) Adjustment time period--The state fiscal year (September through August) that a hospital's claims are adjusted in accordance with subsection (f) or (g)(4) of this section. Adjustments will be done on an annual basis.

(3) All Patient Refined Diagnosis[-]Related Group (APR[-]DRG)--A diagnosis and procedure code classification system for inpatient services.

(4) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period based on diagnosis and severity of illness. "Higher" case-mix refers to sicker patients who require more hospital resources.

(5) Children's Health Insurance Program or CHIP or Program--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. Chapter 7, Title XXI) and Chapters 62 and 63 of the Texas Health and Safety Code.

(6) Inpatient claims during the reporting time period--Includes Medicaid traditional FFS, CHIP, and, if available, managed care data for inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting time period;

(B) were adjudicated and approved for payment during the reporting time period and the six-month grace period that immediately followed, except for such claims that had zero inpatient days;

(C) were not inpatient stays for patients who are covered by Medicare;

(D) were not claims for patients diagnosed with major metastatic cancer, organ transplants, human immunodeficiency virus (HIV), or major trauma; and

(E) were not subject to other exclusions as determined by HHSC.

(7) HHSC--The Health and Human Services Commission or its designee.

(8) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Texas Health and Safety Code, including a general or special hospital as defined by §241.003, Texas Health and Safety Code.

(9) Managed care organization (MCO)--Managed care is a health care delivery system or dental services delivery system in which the overall care of a patient is coordinated by or through a single provider or organization. MCO refers to such a provider or organization under contract with HHSC to provide services to Medicaid recipients.

(10) [(9)] Medicaid program--The medical assistance program established under Chapter 32, Texas Human Resources Code.

(11) [(10)] Norm--The Texas statewide average or the standard by which hospital PPC performance is compared.

(12) [(11)] Potentially preventable complication (PPC)--A harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to an inpatient acute care hospital; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital stay rather than from a natural progression of an underlying disease.

(13) [(12)] Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events, which are more fully defined in §354.1070 of this title.

(14) [(13)] Present on Admission (POA) Indicators--A coding system that requires hospitals to accurately submit principal and secondary diagnoses that are present at the time of admission. POA codes are essential for the accurate calculation of PPC rates and consist of the current coding set approved by CMS.

(15) [(14)] Reporting time period--The period of time that includes hospital claims that are assessed for PPCs. This may be a state fiscal year (September through August) or other specified time frame as determined by HHSC. PPC Reports will consist of statewide and hospital-specific reports and will be done at least on an annual basis, using the most complete data period available to HHSC.

(16) Safety-net hospital--As defined in §355.8052 of this title (relating to Inpatient Hospital Reimbursement).

(c) Calculating a PPC rate. Using inpatient claims during the reporting time period and HHSC-designated software and methodology, HHSC calculates an actual PPC rate and an expected PPC rate for each hospital included in the analysis. The methodology for inclusion of hospitals in the analysis will be described in the statewide and hospital-specific reports. HHSC will determine at its discretion the relative weights of PPCs when calculating the actual to expected ratio.

(d) Comparing the PPC performance of all hospitals included in the analysis. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPC rates.

(e) Reporting results of PPC rate calculations. HHSC provides a confidential report to each hospital included in the analysis regarding the hospital's performance with respect to potentially preventable complications, including the PPC rates calculated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(1) A hospital may request the underlying data used in the analysis to generate the report via an email request to the HHSC email address found on the report.

(2) The underlying data contains patient-level identifiers and other information deemed relevant by HHSC.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPC ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of -2%;

(2) A hospital with an actual-to-expected PPC ratio greater than 1.25 is subject to a reimbursement adjustment of -2.5%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section apply to all Medicaid fee-for-service claims beginning November 1, 2013 and after.

(2) The reimbursement adjustments will occur after the confidential report on which the reimbursement adjustments are based is made available to hospitals.

(3) The reimbursement adjustments for a hospital will cease in the adjustment time period that is after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

(4) Based on HHSC-approved POA data screening criteria, HHSC may implement automatic payment reductions to hospitals who fail POA screening. The POA screening criteria and methodology will be described in the statewide and hospital specific reports. At its discretion, HHSC applies the following adjustments based on POA screening criteria: [The POA screening process will begin during the FY15 reporting time period and will apply to the corresponding adjustment time period as follows:]

(A) Failure to meet POA screening criteria, first reporting period violation: 2% reduction applied to all Medicaid fee-for-service claims in the corresponding adjustment period.

(B) Failure to meet POA screening criteria, two or more violations in a row: 2.5% applied all Medicaid fee-for-service claims in the corresponding adjustment period.

(C) If a hospital passes POA screening criteria during a reporting time period, any future violations of the POA screening criteria will be considered a first violation.

(5) The reimbursement adjustments based on POA screening criteria will cease when the hospital passes HHSC-approved POA screening criteria for an entire reporting time period, at which the hospital will be subject to reimbursement adjustments, if applicable, based on criteria outlined in subsection (f) of this section.

(6) Hospitals that receive a reimbursement adjustment based on POA screening criteria outlined in paragraph (4) of this subsection will not concurrently receive reductions outlined in subsection (f) of this section.

(h) Targeted incentive payments for safety-net hospitals.

(1) HHSC determines annually whether a safety-net hospital may receive an incentive payment for performance on PPC incidence.

(2) The appropriated funds for the targeted incentive payments are split in half, 50 percent for PPCs and 50 percent for potentially preventable readmissions.

(3) The dataset used in the incentive analysis is the same as the dataset used in the PPC reimbursement adjustments.

(4) Hospitals that are eligible for a targeted incentive payment must meet the following requirements:

(A) be a safety-net hospital;

(B) have an actual-to-expected ratio of at least 10 percent lower than the statewide average (actual-to-expected ratio is less than or equal to 0.90);

(C) have not received a penalty for either PPCs or potentially preventable readmissions; and

(D) are not low-volume, as defined by HHSC.

(5) Calculation of targeted incentive payments.

(A) Calculate base allocation. Each eligible hospital is awarded a base allocation not to exceed \$100,000.

(B) Calculate variable allocation. Each eligible hospital is awarded a variable allocation, which is calculated from remaining funds after distribution of base allocations to all eligible hospitals. The variable allocation has the following components:

(i) Hospital size score. Each eligible hospital's size divided by the average size of the whole group of hospitals within each incentive pool. Size is calculated based on total inpatient facility claims paid to each eligible hospital. Each eligible hospital's size calculation is capped at 2.00.

(ii) Hospital Performance score. Each eligible hospital's performance divided by the average performance of the whole group of hospitals within each incentive pool. Performance is calculated by actual to expected ratio.

(iii) Composite score. Each eligible hospital receives a composite score, which is the hospital's size score multiplied by the hospital's performance score.

(iv) Each hospital's composite score divided by the sum of all eligible hospitals' composite scores is multiplied by the remaining incentive funds, after distribution of base allocations.

(C) Calculate final allocation. The final allocation to each eligible hospital is equal to the eligible hospital's base allocation plus the eligible hospital's variable allocation.

(6) Each eligible hospital's PPC incentive payment will be divided between FFS and MCO reimbursements based on the percentage of its total paid FFS and MCO Medicaid inpatient hospital reimbursements for the reporting time period accruing from FFS.

(7) PPC incentive payments may be made as lump sum payments or tied to particular claims or recipients at HHSC's discretion.

(8) HHSC will post the methodology for calculating and distributing incentives on its public website.

(9) Targeted incentive payments for safety-net hospitals are not included in the calculation of a hospital's hospital-specific limit.

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 January 25, 2016.

TRD-201600284

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 424-6900



## CHAPTER 375. REFUGEE CASH ASSISTANCE AND MEDICAL ASSISTANCE PROGRAMS SUBCHAPTER G. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

### 1 TAC §375.701

The Texas Health and Human Services Commission (HHSC) proposes new §375.701, concerning Local Governmental and Community Input.

#### BACKGROUND AND JUSTIFICATION

The Office of Immigration and Refugee Affairs within HHSC is the single point of contact for federally funded refugee cash and medical assistance and social services in Texas. Refugee resettlement and placement is primarily a process between the U.S. Department of State, national resettlement agencies, and their local resettlement agency affiliates. HHSC contracts with the local resettlement agencies in Texas to provide refugee resettlement services, including refugee cash assistance under the State Plan for the Refugee Program.

Senate Bill (SB) 1928, 84th Legislature, Regular Session, 2015, enacted Texas Government §531.0411, which requires HHSC to adopt rules requiring local resettlement agencies to obtain governmental and community input for the proposal process of refugee placements in Texas. The proposed new rule in 1 TAC Chapter 375, concerning Refugee Cash Assistance and Medical Assistance Programs, adds requirements for local resettlement agencies engaged in the refugee resettlement and placement process in Texas.

The new rule requires local resettlement agencies to:

- 1) Convene meetings at least quarterly at which local resettlement agencies consult with local governmental entities and officials, and other community stakeholders, on proposed refugee placement.
- 2) Respond within five business days to requests from a local governmental entity or community stakeholders to meet, in addition to the quarterly meetings, regarding the resettlement process.
- 3) Consider input from these meetings when developing an annual refugee placement report to their national organizations for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 4) Provide HHSC, local governmental entities and officials and local community stakeholders with a copy of each proposed annual report for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 5) Submit a final annual report to their national organizations and HHSC summarizing how this input contributed to the development of their annual refugee placement report for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 6) Provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

7) Respond within five business days to requests for information related to the resettlement process by local governmental entities and officials or community stakeholders, to the extent not otherwise prohibited by state or federal law.

Local refugee resettlement agencies are already required by their national organizations and the U.S. Department of State to engage in community consultation and to provide quarterly community consultations reports. See: 8 U.S.C. §1522(a)(2)(C)(ii) and (b)(7). The reports serve as a record of the consultations and describe both best practices and issues that prevent adequate resettlement or result in changes in placement plans for the area. SB 1928 provides more specificity and structure around the existing federal requirements. As a result, any costs incurred by local resettlement agencies to comply with the proposed new rule will be minimal.

#### SECTION-BY-SECTION SUMMARY

Proposed §375.701(a) describes the terms used in the subchapter.

Proposed §375.701(b) describes the requirements for local resettlement agencies to obtain governmental and community input for the proposal process of refugee placements in Texas.

Proposed §375.701(c) describes how a local resettlement agency must respond to a request from a local governmental entity or community stakeholder to meet with the resettlement agency regarding refugee placement.

Proposed §375.701(d) describes how a local resettlement agency must respond to a request from a local governmental entity or community stakeholder for information related to the resettlement process.

Proposed §375.701(e) describes the requirement for local resettlement agencies to consider all feedback obtained from the meetings held under subsections (b) and (c) of this section for purposes of their proposed annual report on the placement of refugees.

Proposed §375.701(f) describes to whom the local resettlement agencies must provide a copy of their proposed annual report on the placement of refugees.

Proposed §375.701(g) describes the reporting requirements for the local resettlement agencies.

Proposed §375.701(h) describes the requirement for the local resettlement agencies to provide HHSC with their refugee placement recommendations.

Proposed §375.701(i) describes how local resettlement agencies contracted by HHSC must comply with the requirements described in this subchapter.

#### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there will be no impact to costs and revenues of state and local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined there will be no adverse economic effect on small businesses or micro-businesses, as no local resettlement agencies affected qualify as small businesses or micro-businesses.

#### PUBLIC BENEFIT

Charles Smith, Chief Deputy Executive Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be improved documentation and oversight regarding the placement of refugees in local communities.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rule. The proposed rule will not affect a local economy and there is no anticipated negative impact on local employment.

#### REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Helen Oh, Program Specialist, 909 W. 45th Street, Mail Code 2010, Austin Texas 78751; by fax to (512) 206-5812; or by e-mail to [helen.oh@hhsc.state.tx.us](mailto:helen.oh@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

#### PUBLIC HEARING

A public hearing is scheduled for February 19, 2016, from 9:45 a.m. to 10:45 a.m. (CST) in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

#### STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Government Code §752.004, which authorize HHSC to apply for and distribute funds to agencies responsible for providing services to refugees; and Texas Government Code §531.0411 which requires the Executive Commissioner of HHSC to adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information.

No other statutes, articles, or codes are affected by this proposal.

§375.701. Local Governmental and Community Input.

(a) For purposes of this subchapter, the following definitions apply:

(1) Business day--A day that is not a Saturday, Sunday, or federal legal holiday. In computing a period of business days, the first

day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or federal legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or federal legal holiday.

(2) HHSC--Texas Health and Human Services Commission, or its designee.

(3) Local resettlement agency--As defined by 45 C.F.R. §400.2, means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(4) National voluntary agency--As defined by 45 C.F.R. §400.2, means one of the national resettlement agencies or a state or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(b) A local resettlement agency must convene meetings at least quarterly at which representatives of the local resettlement agency have an opportunity to consult with and obtain feedback regarding proposed refugee placement from, at a minimum:

(1) local governmental entities and officials, including:

(A) municipal and county officials;

(B) local school district officials; and

(C) representatives of local law enforcement agencies;

and

(2) community stakeholders, including:

(A) major providers under the local health care system;

and

(B) major employers of refugees.

(c) In addition to the quarterly meetings held under subsection (b) of this section, local governmental entities and community stakeholders may request to meet with a local resettlement agency regarding refugee placement.

(1) A local resettlement agency must respond within five business days to a request from a local governmental entity or community stakeholder to meet.

(2) If a request for a meeting is denied, the response must be in writing and the reason for denial must be clearly stated.

(3) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(d) To facilitate consultation and effective feedback, local governmental entities and community stakeholders may request information from a local resettlement agency related to the resettlement process.

(1) A local resettlement agency must respond within five business days as to whether a request for information from a local governmental entity or community stakeholder will be granted.

(2) If the request is granted, the local resettlement agency must provide the requested information no later than 15 business days from the date of the receipt of the request, to the extent not otherwise prohibited by state or federal law.

(3) If a request for information is denied, the response must be in writing and the reason for denial must be clearly stated.

(4) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than 3 business days after it is sent to the local governmental entity or community stakeholder.

(e) A local resettlement agency must consider all feedback obtained in community consultation meetings under subsections (b) and (c) of this section before preparing a proposed annual report on the placement of refugees for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(f) A local resettlement agency must provide HHSC, local governmental entities and officials, and community stakeholders described under subsection (b) of this section a copy of the proposed annual report on the placement of refugees for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(g) A local resettlement agency must develop and submit a final annual report to the local refugee resettlement agency's national voluntary agency and for HHSC that includes a summary regarding how community stakeholder input contributed to the development of the report for the purposes of 8 U.S.C. Section 1522(b)(7)(E).

(h) A local resettlement agency must provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

(i) In addition to applicable requirements specified in Subchapter B of this chapter (relating to Contractor Requirements for the Refugee Cash Assistance Program), Subchapter C of this chapter (relating to Program Administration for the Refugee Cash Assistance Program), and Subchapter E of this chapter (relating to Refugee Medical Assistance), a contract with a local resettlement agency to provide Refugee Cash Assistance services must comply with the requirements of this subchapter.

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600241

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 424-6900



## CHAPTER 376. REFUGEE SOCIAL SERVICES SUBCHAPTER J. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

### 1 TAC §376.1001

The Texas Health and Human Services Commission (HHSC) proposes new §376.1001, concerning Local Governmental and Community Input.

#### BACKGROUND AND JUSTIFICATION

The Office of Immigration and Refugee Affairs within HHSC is the single point of contact for federally funded refugee cash and medical assistance and social services in Texas. Refugee reset-

tlement and placement is primarily a process between the U.S. Department of State, national resettlement agencies, and their local resettlement agency affiliates. HHSC contracts with the local resettlement agencies in Texas to provide refugee resettlement services, including refugee social services under the State Plan for the Refugee Program.

Senate Bill (SB) 1928, 84th Legislature, Regular Session, 2015, enacted Texas Government §531.0411, which requires HHSC to adopt rules requiring local resettlement agencies to obtain governmental and community input for the proposal process of refugee placements in Texas. The proposed new rule in 1 TAC Chapter 376, concerning Refugee Social Services, adds requirements for local resettlement agencies engaged in the refugee resettlement and placement process in Texas.

The new rule requires local resettlement agencies to:

- 1) Convene meetings at least quarterly at which local resettlement agencies consult with local governmental entities and officials, and other community stakeholders, on proposed refugee placement.
- 2) Respond within five business days to requests from a local governmental entity or community stakeholders to meet, in addition to the quarterly meetings, regarding the resettlement process.
- 3) Consider input from these meetings when developing an annual refugee placement report to their national organizations for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 4) Provide HHSC, local governmental entities and officials and local community stakeholders with a copy of each proposed annual report for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 5) Submit a final annual report to their national organizations and HHSC summarizing how this input contributed to the development of their annual refugee placement report for purposes of 8 U.S.C. Section 1522(b)(7)(E).
- 6) Provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.
- 7) Respond within five business days to requests for information related to the resettlement process by local governmental entities and officials or community stakeholders, to the extent not otherwise prohibited by state or federal law.

Local refugee resettlement agencies are already required by their national organizations and the U.S. Department of State to engage in community consultation and to provide quarterly community consultations reports. See: 8 U.S.C. §1522(a)(2)(C)(ii) and (b)(7). The reports serve as a record of the consultations and describe both best practices and issues that prevent adequate resettlement or result in changes in placement plans for the area. SB 1928 provides more specificity and structure around the existing federal requirements. As a result, any costs incurred by local resettlement agencies to comply with the proposed new rule will be minimal.

#### SECTION-BY-SECTION SUMMARY

Proposed §376.1001(a) describes the terms used in the subchapter.

Proposed §376.1001(b) describes the requirements for local resettlement agencies to obtain governmental and community input for the proposal process of refugee placements in Texas.

Proposed §376.1001(c) describes how a local resettlement agency must respond to a request from a local governmental entity or community stakeholder to meet with the resettlement agency regarding refugee placement.

Proposed §376.1001(d) describes how a local resettlement agency must respond to a request from a local governmental entity or community stakeholder for information related to the resettlement process.

Proposed §376.1001(e) describes the requirement for local resettlement agencies to consider all feedback obtained from the meetings held under subsections (b) and (c) of this section for purposes of their proposed annual report on the placement of refugees.

Proposed §376.1001(f) describes to whom the local resettlement agencies must provide a copy of their proposed annual report on the placement of refugees.

Proposed §376.1001(g) describes the reporting requirements for the local resettlement agencies.

Proposed §376.1001(h) describes the requirement for the local resettlement agencies to provide HHSC with their refugee placement recommendations.

Proposed §376.1001(i) describes how local resettlement agencies contracted by HHSC must comply with the requirements described in this subchapter.

#### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there will be no impact to costs and revenues of state and local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined there will be no adverse economic effect on small businesses or micro-businesses, as no local resettlement agencies affected qualify as small businesses or micro-businesses.

#### PUBLIC BENEFIT

Charles Smith, Chief Deputy Executive Commissioner, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be improved documentation and oversight regarding the placement of refugees in local communities.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rule. The proposed rule will not affect a local economy and there is no anticipated negative impact on local employment.

#### REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Written comments on the proposal may be submitted to Helen Oh, Program Specialist, 909 W. 45th Street, Mail Code 2010, Austin Texas 78751; by fax to (512) 206-5812; or by e-mail to [helen.oh@hhsc.state.tx.us](mailto:helen.oh@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

## PUBLIC HEARING

A public hearing is scheduled for February 19, 2016, from 9:45 a.m. to 10:45 a.m. (CST) in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

## STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Government Code §752.004, which authorize HHSC to apply for and distribute funds to agencies responsible for providing services to refugees; and Texas Government Code §531.0411 which requires the Executive Commissioner of HHSC to adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information.

No other statutes, articles, or codes are affected by this proposal.

### §376.1001. Local Governmental and Community Input.

(a) For purposes of this subchapter, the following definitions apply:

(1) Business day--A day that is not a Saturday, Sunday, or federal legal holiday. In computing a period of business days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or federal legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or federal legal holiday.

(2) HHSC--Texas Health and Human Services Commission, or its designee.

(3) Local resettlement agency--As defined by 45 C.F.R. §400.2, means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(4) National voluntary agency--As defined by 45 C.F.R. §400.2, means one of the national resettlement agencies or a state or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(b) A local resettlement agency must convene meetings at least quarterly at which representatives of the local resettlement agency have

an opportunity to consult with and obtain feedback regarding proposed refugee placement from, at a minimum:

(1) local governmental entities and officials, including:

(A) municipal and county officials;

(B) local school district officials; and

(C) representatives of local law enforcement agencies;

and

(2) community stakeholders, including:

(A) major providers under the local health care system;

and

(B) major employers of refugees.

(c) In addition to the quarterly meetings held under subsection (b) of this section, local governmental entities and community stakeholders may request to meet with a local resettlement agency regarding refugee placement.

(1) A local resettlement agency must respond within five business days to a request from a local governmental entity or community stakeholder to meet.

(2) If a request for a meeting is denied, the response must be in writing and the reason for denial must be clearly stated.

(3) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(d) To facilitate consultation and effective feedback, local governmental entities and community stakeholders may request information from a local resettlement agency related to the resettlement process.

(1) A local resettlement agency must respond within five business days as to whether a request for information from a local governmental entity or community stakeholder will be granted.

(2) If the request is granted, the local resettlement agency must provide the requested information no later than 15 business days from the date of the receipt of the request, to the extent not otherwise prohibited by state or federal law.

(3) If a request for information is denied, the response must be in writing and the reason for denial must be clearly stated.

(4) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than 3 business days after it is sent to the local governmental entity or community stakeholder.

(e) A local resettlement agency must consider all feedback obtained in community consultation meetings under subsections (b) and (c) of this section before preparing a proposed annual report on the placement of refugees for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(f) A local resettlement agency must provide HHSC, local governmental entities and officials, and community stakeholders described under subsection (b) of this section a copy of the proposed annual report on the placement of refugees for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(g) A local resettlement agency must develop and submit a final annual report to the local refugee resettlement agency's national voluntary agency and for HHSC that includes a summary regarding how community stakeholder input contributed to the development of the report for the purposes of 8 U.S.C. Section 1522(b)(7)(E).

(h) A local resettlement agency must provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

(i) In addition to applicable requirements specified in Subchapter B of this chapter (relating to Contractor Requirements), a contract with a local resettlement agency to provide Refugee Social Services must comply with the requirements of this subchapter.

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600242

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 424-6900



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code Chapter 80, §§80.3, 80.30, 80.32, 80.36, 80.41, 80.71, 80.73 and 80.90 relating to the regulation of the manufactured housing program. The rules are revised for clarification purposes.

Section 80.3(f): Revised to clarify the installer is also eligible to request an industry inspection per §1201.355(b) of the Standards Act.

Section 80.30(f): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.30(g): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.32(u): The new subsection clarifies how long a person has to exercise their right of rescission without penalty or charge.

Section 80.36(a): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.36(d): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.41(d)(6)(B): The new subparagraph enables the continuing education provider to submit their renewal application and fee and continue operating. This will be most beneficial in the event that a renewal is pending and the regularly scheduled board meetings are postponed and or rescheduled, or canceled due to lack of a quorum.

Section 80.41(f)(1): The revision will assist in preventing former license holders whose license was revoked, suspended, and/or

denied from applying for a salesperson's license when they may be viewed as unsuitable to work in the manufactured housing industry.

Section 80.71(d): The new subsection clarifies that the Department may serve the notice of hearing on the respondent to the last known address as shown by the Department's records.

Section 80.71(f): The new subsection clarifies the process when a default is granted by the administrative law judge without issuance of a default proposal for decision.

Section 80.73(e): Clarifies the timeframe in which the Department requires the licensee to submit the completed service or work orders.

Section 80.73(f): Revised to remind license holders of the risk of requesting an extension without sufficient basis well in advance in case the request is denied.

Section 80.90(a)(6): Revised to include personal property in the designation for use as a dwelling that requires evidence of a satisfactory habitability inspection by the Department.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures and to comply with the Manufactured Housing Standards Act.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under the Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at [mhproposedrulecomments@tdhca.state.tx.us](mailto:mhproposedrulecomments@tdhca.state.tx.us). The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

#### SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

##### 10 TAC §80.3

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as

necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.3. *Fees.*

(a) - (e) (No change.)

(f) Industry Request. The manufacturer, ~~[or] retailer, or installer~~ may request a consumer complaint home inspection. The request must be accompanied by the required fee of \$150.00.

(g) - (n) (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 January 19, 2016.

TRD-201600207

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-2206



## SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

### 10 TAC §§80.30, 80.32, 80.36

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rules.

§80.30. *All Licensees' Responsibilities.*

(a) - (e) (No change.)

(f) Any advertisement (including social media) by a retailer, broker, or installer (other than a sign/display advertisement at a licensed location, point of sale literature, or a price tag) must conspicuously disclose the license number of the person who is advertising.

(g) Any advertisement (including social media) by a salesperson must conspicuously disclose the name and license number of their sponsoring retailer identified on their valid salespersons license.

(h) - (i) (No change.)

§80.32. *Retailers' Responsibilities and Requirements.*

(a) - (t) (No change.)

(u) A person may exercise their right of rescission of contract for sale, exchange, or lease-purchase of home pursuant to §1201.1521 of the Standards Act within three (3) business days without penalty or charge.

(v) ~~[(u)]~~ The written warranty that the used manufactured home is habitable as per §1201.455 of the Standards Act, shall have been timely delivered if given to the homeowner at or prior to possession or at the time the applicable sales agreement is signed.

(w) ~~[(v)]~~ The written manufacturer's new home construction warranty per §1201.351 of the Standards Act, shall be timely delivered if given to the homeowner at or prior to the time of initial installation at the consumer's home site.

§80.36. *Retailers' Rebuilding Responsibilities and Requirements.*

(a) Any home that is salvaged [~~which has sustained sufficient damage to be declared salvage~~] as defined in §1201.461 of the Standards Act, may be rebuilt/repared for purposes of issuance of a manufactured Statement of Ownership and Location at the option of the Department after inspection in accordance with Department procedures. Notification in writing to the Department at its Austin headquarters [~~headquarter's office~~] shall be required before rebuilding/repair begins.

(b) - (c) (No change.)

(d) A manufactured home which does not meet the definition of salvage as defined in §1201.461 of the Standards Act, [~~has not sustained sufficient damage to be declared salvage~~] may be refurbished to its original structural configuration so that it is habitable as defined by §1201.453 of the Standards Act.

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

Filed with the Office of the Secretary of State on January 19, 2016.

TRD-201600208

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-2206



## SUBCHAPTER D. LICENSING

### 10 TAC §80.41

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.41. *License Requirements.*

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

(d) Continuing Education.

(1) - (5) (No change.)

(6) Once the Department determines that a request for approval is complete, that request will be placed on the next regularly scheduled meeting of the Board for consideration. The Department

will provide the board with a written recommendation on each such request. The staff will advise the applicant of the board's action within ten (10) business days of the date of the board meeting, including a written statement as to any limitations, conditions, or other requirements imposed.

(A) Approvals shall be for a period not to exceed two years. The Department may, at no cost, attend or send a representative to attend any approved portion of the continuing education program to determine that the courses are being taught in accordance with the terms of approval.

(B) Should the two-year approval time for a continuing education provider expire in between regularly scheduled board meetings, the executive director may issue approval to continue providing services until the next board meeting upon receipt of the required renewal application, fee, and necessary documentation of education material.

(C) ~~[(B)]~~ The Department may revoke or suspend approval of a continuing education program if the Department determines that any of the courses are not being taught in accordance with the terms of approval or that any of the courses are not being administered in accordance with the law or these rules. Any action to revoke or suspend such an approval is a contested matter under Chapter 2001, Government Code, and the party against whom revocation or suspension is sought may make a written request for a hearing before an Administrative Law Judge. If no such hearing is requested within thirty (30) calendar days after receipt of notice from the Department, the Department order of suspension or revocation shall become final.

(e) (No change.)

(f) License Application or Renewal Denial.

(1) In the evaluation of an applicant for a license, ~~other than a salesperson's license,~~ the Director shall consider whether the applicant or any related person involved with the applicant has previously:

(A) - (E) (No change.)

(2) - (6) (No change.)

(g) (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 January 19, 2016.

TRD-201600209

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-2206



## SUBCHAPTER E. ENFORCEMENT

### 10 TAC §80.71, §80.73

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the

Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rules.

#### §80.71. Rules for Hearings.

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

(d) The Department may serve the notice of hearing on the respondent at his or her last known address as shown by the Department's records.

(e) ~~[(d)]~~ If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with Government Code, Chapter 2001, also known as the Administrative Procedures Act, the hearing may proceed in that party's absence and a proposal for decision may be entered by default, accepting all facts and conclusions of law as deemed admitted.

(f) If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues a default order dismissing the case and returning the file to the Department for informal disposition on a default basis in accordance with §2001.056 of the Texas Government Code, the Executive Director may issue a final order deeming the allegations in the Notice of Hearing as true.

(g) ~~[(e)]~~ Pursuant to the Administrative Procedures Act, each party has the right to file exceptions to the Proposal for Decision and present a brief with respect to the exceptions. All exceptions must be filed with the Department within ten (10) business days of the Proposal for Decision, with replies to be filed ten (10) business days after the filing of exceptions.

(h) ~~[(f)]~~ When an administrative hearing is held for any matter in which the Department seeks to take action against a licensee for violating the Standards Act or these rules, whether such action is an action to assess administrative penalties, to require corrective action, to require cessation of improper activities, to suspend or revoke a license, or any combination thereof, the Department shall assess the costs of the proceeding against any party that fails to appear at a duly noticed administrative hearing. The costs assessed shall be the greater of \$100 or the actual costs charged to the Department by the State Office of Administrative Hearings, the Office of the Attorney General, any court reporter, or any other third party providing services in connection with such hearing.

(i) ~~[(g)]~~ The Department will seek the recovery of its costs from any party against whom it initiates an action if that action results in the entry of a final order taking any administrative action against that party, including the assessment of administrative penalties, requiring corrective action, requiring cessation of improper activities, suspension or revocation of a license, or any combination thereof.

#### §80.73. Procedures for Handling Consumer Complaints.

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

(e) When service or repairs are completed following any notice or orders from the Department pursuant to §1201.356(a) of the Standards Act, the manufacturer, retailer, and/or installer shall forward to the Department copies of service or work orders reflecting the date the work was completed, or other documentation to establish that the warranty service or repairs have been completed. A consumer is not required to sign the service or work order. These service or work orders must be received by the Department no later than [withi]n five (5)

calendar days ~~from~~ [after] the expiration of the period of time specified in the warranty order issued by the Department. Corrective action taken is subject to re-inspection.

(f) If service or repairs cannot be made within the specified time frame, the license holder shall notify the Department in writing prior to the expiration of the specified time on the warranty order [~~frame~~ by certified mail]. The notice shall list those items which have been, or will be, completed within the time frame and shall show good cause why the remainder of the service or repairs cannot be made within the specified time frame. The license holder shall request an extension for a specific time. Original deadline to complete warranty work may apply if the request for extension is denied. If the Department fails to respond in writing to the request within five (5) business days of the date of receipt of the notice of request for extension, the extension has been granted.

(g) - (h) (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 January 19, 2016.

TRD-201600210

Joe A. Garcia

Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: March 6, 2016  
For further information, please call: (512) 475-2206



## SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

### 10 TAC §80.90

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.90. *Issuance of Statements of Ownership and Location.*

(a) Application Requirements. In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:

(1) - (5) (No change.)

(6) When a manufactured home is to be designated for use as a dwelling and/or personal property after the home has been designated for business use, salvage, or as real property, evidence of a satisfactory habitability inspection by the Department.

(b) - (i) (No change.)

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

Filed with the Office of the Secretary of State on January 19, 2016.

TRD-201600211

Joe A. Garcia

Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: March 6, 2016  
For further information, please call: (512) 475-2206



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 1. AGENCY ADMINISTRATION

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 19 TAC §1.18

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §1.18 concerning the status of the Education Research Center Advisory Board. Specifically, the proposed amendment to this section reflects changes in Texas Education Code, §1.006(b). The Education Research Center Advisory Board is now considered a governmental body for the purposes of Chapters 551 and 552 of the Texas Government Code.

Dr. Julie Eklund, Assistant Commissioner, THECB, has determined that for each year of the first five years the section is in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to Julie A. Eklund, Assistant Commissioner, Strategic Planning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, [julie.eklund@theeb.state.tx.us](mailto:julie.eklund@theeb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment reflects changes to Texas Education Code, §1.006(b) as amended by the 84th Legislature (S.B. 685).

The amendment affects Texas Administrative Code, Title 19, Chapter 1, Subchapter A, §1.18(c)(1).

§1.18. *Operation of Education Research Centers.*

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

(c) Advisory Board.

(1) The Commissioner of Higher Education shall create and maintain an advisory board to review and approve, as it deems appropriate, research involving access to confidential information and to adopt policies and rules governing the protection of such information in ERC operations. The Advisory Board is considered to be [not] a governmental body for purposes of Chapters 551 and 552 of the Texas Government Code.

(2) - (8) (No change.)

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

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600287

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER K. FORMULA ADVISORY COMMITTEE - COMMUNITY AND TECHNICAL COLLEGES

### 19 TAC §§1.156, 1.158, 1.161

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §§1.156, 1.158, and 1.161 concerning the Formula Advisory Committee - Community and Technical Colleges. Specifically, the proposed amendment to §1.156 adds Texas Education Code, §61.059(b-1) as part of the statutory authority for Subchapter K. Specifically, the proposed amendment to §1.158 allows the formula advisory committee to appoint workgroups or subcommittees (which are currently allowed). Specifically, the proposed amendment to §1.161 corrects the citation regarding the state's higher education master plan from §61.051(a-2) to 61.051(a-1).

Dr. Julie Eklund, Assistant Commissioner, Coordinating Board, has determined that for each year of the first five years the sections are in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to David Young, Senior Director, Special Projects, Strategic Planning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, [david.young@thechb.state.tx.us](mailto:david.young@thechb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education. Please note that our general rules governing all advisory committees require that subcommittees or work groups be in compliance with Texas Government Code Chapter 2110 - specifically no more than 24 members.

The amendments affect Texas Administrative Code, Title 19, Chapter 1, Agency Administration, Subchapter K, Formula Advisory Committee - Community and Technical Colleges.

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

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

(b) (No change.)

*§1.158. Committee Membership and Officers.*

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

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

(f) - (g) (No change.)

*§1.161. Tasks Assigned to the Committee.*

Tasks assigned to the committee include:

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

(3) Identify funding incentives that would support the achievement of the state's goals outlined in the long-term master plan for higher education authorized in the Texas Education Code, §61.051(a-1) [(a-2)]; and

(4) (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 January 25, 2016.

TRD-201600288

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER L. FORMULA ADVISORY COMMITTEE - GENERAL ACADEMIC INSTITUTIONS

### 19 TAC §1.164, §1.169

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to §1.164 and §1.169 concerning the Formula Advisory Committee - General Academic Institutions. Specifically, the proposed amendment to §1.164 adds Texas Education Code, §61.059(b-1), as part of the statutory authority for Subchapter L. The proposed amendment to §1.169 corrects the citation regarding the state's higher education master plan from §61.051(a-2) to §61.051(a-1).

Dr. Julie Eklund, Assistant Commissioner, THECB, has determined that for each year of the first five years the sections are in effect, there will be no fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to David Young, Senior Director, Special Projects, Strategic Plan-

ning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, [david.young@theeb.state.tx.us](mailto:david.young@theeb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education.

The amendments affect Texas Administrative Code, Title 19, Chapter 1, Agency Administration, Subchapter L, Formula Advisory Committee - General Academic Institutions.

§1.164. *Authority and Specific Purposes of the General Academic Institutions Formula Advisory Committee.*

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

(b) (No change.)

§1.169. *Tasks Assigned the Committee.*

Tasks assigned to the committee include:

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

(3) Identify funding incentives that would support the achievement of the state's goals outlined in the long-term master plan for higher education authorized in the Texas Education Code, §61.051(a-1) [(a-2)]; and

(4) (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 January 25, 2016.

TRD-201600289

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER M. FORMULA ADVISORY COMMITTEE - HEALTH-RELATED INSTITUTIONS

### 19 TAC §1.176

The Texas Higher Education Coordinating Board (Coordinating Board) proposes an amendment to §1.176, concerning the Formula Advisory Committee - Health-Related Institutions. Specifically, the proposed amendment corrects the citation regarding the state's higher education master plan from §61.051(a-2) to §61.051(a-1).

Dr. Julie Eklund, Assistant Commissioner, Coordinating Board, has determined that for each year of the first five years the section is in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply

with the section as proposed. There is no impact on local employment.

Comments on the proposed amendment may be submitted to David Young, Senior Director, Special Projects, Strategic Planning and Funding, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, [david.young@theeb.state.tx.us](mailto:david.young@theeb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §61.059(b), which provides the Coordinating Board with authority to review and revise formula recommendations for institutions of higher education.

The amendment affects Texas Administrative Code, Title 19, Chapter 1, Agency Administration, Subchapter M, Formula Advisory Committee - Health-Related Institutions.

§1.176. *Tasks Assigned the Committee.*

Tasks assigned to the committee include:

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

(3) Identify funding incentives that would support the achievement of the state's goals outlined in the long-term master plan for higher education authorized in the Texas Education Code, §61.051(a-1) [(a-2)]; and

(4) (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 January 25, 2016.

TRD-201600291

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

#### 19 TAC §§4.82, 4.83, 4.85

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§4.82, 4.83 and 4.85, concerning Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges. The intent of these amendments is to clarify the parameters of dual credit partnerships between secondary schools and Texas public colleges and universities.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five

years there will be no fiscal implications for state or local governments as a result of amending the rules.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of rules governing dual credit partnerships between secondary schools and Texas public colleges and universities. There are no significant economic costs anticipated to persons and institutions who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amended sections are proposed under the Texas Education Code, Chapter 28, Subchapter A, §28.009 and Chapter 130, Subchapter A, §130.001 which authorize the Coordinating Board to regulate dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary schools.

The amended sections affect the implementation of Texas Education Code, §28.009 and §130.008.

#### §4.82. Authority.

Texas Education Code, [§]§28.009(b) and [; 29.182; 29.184; 61.027; §130.001(b)(3) - (4); 130.008; 130.090; and 135.06(d)] provide the Board with the authority to regulate dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary schools.

#### §4.83. Definitions.

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

(1) Academic dual credit course--Semester credit course included or allowed under the provisions of the Lower-Division Academic Course Guide Manual (ACGM) designed for college transfer to institutions of higher education in completion of associate and baccalaureate degree programs, or contained in the lower division of the approved undergraduate course inventory of a public university.

(2) [(+) Board--The Texas Higher Education Coordinating Board.

(3) [(2)] College--Public two-year associate degree-granting institutions and public universities.

(4) College Board Advanced Placement--College-level courses and exams available to secondary students under the auspices of the College Board. A College Board-approved Advanced Placement (AP) Program must adhere to the AP course descriptions, include administration of official AP exams, foster teacher professional development, and provide access to AP courses for all students who are willing to enroll in the rigorous academic curriculum of AP courses as prescribed by the College Board.

(5) [(3)] Commissioner--The Commissioner of Higher Education.

(6) [(4)] Dual credit--A process by which a high school student enrolls in a college course and receives simultaneous academic credit for the course from both the college and the high school. While

dual credit courses are often taught on the secondary school campus to high school students only, applicable sections of these rules, §4.84(a) and §4.85(a), (b), (g), (h), (i) of this title (relating to Dual Credit Partnerships), also apply when a high school student takes a course on the college campus and receives both high school and college credit. Dual credit is also referred to as concurrent course credit; the terms are equivalent. However, dual (or concurrent) enrollment refers to a circumstance in which a student is enrolled in more than one educational institution (including a high school and a college).

(7) End-of-Course--Assessment instruments adopted by the Texas Education Agency for secondary-level courses in Algebra I, biology, English I, English II, and United States History.

[(5) College Board Advanced Placement--College-level courses and exams available to secondary students under the auspices of the College Board. A College Board-approved Advanced Placement (AP) Program must adhere to the AP course descriptions; include administration of official AP exams; foster teacher professional development, and provide access to AP courses for all students who are willing to enroll in the rigorous academic curriculum of AP courses as prescribed by the College Board.]

(8) [(6)] Public two-year associate degree-granting institution--A community college, a technical college, or a state college.

(9) State of Texas Assessments of Academic Readiness--The criterion-referenced assessment instruments required under Texas Education Code, §39.023, designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science in grades three through twelve.

(10) [(7)] Texas Assessment of Knowledge and Skills--The criterion-referenced assessment instruments required under Texas Education Code, §39.023, designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science in grades three through twelve.

(11) Workforce education dual credit course--Career technical/workforce course contained in the Workforce Education Course Manual (WECM) for which semester credit hours are awarded and applies toward the completion of a certificate or applied associate degree.

#### §4.85. Dual Credit Requirements.

(a) Eligible Courses.

(1) (No change.)

(2) Courses offered for dual credit by public universities must be lower division in the approved undergraduate course inventory of the university.

(3) (No change.)

(b) Student Eligibility.

(1) A high school student is eligible to enroll in workforce education dual credit courses as defined in §4.83 of this title (relating to Definitions) contained in a Level 1 certificate program, or a program leading to a credential of less than a Level 1 certificate, at a public junior college or public technical institute and shall not be required to provide demonstration of college readiness.

(2) [(+) A high school student is eligible to enroll in academic dual credit courses as defined in §4.83 if the student demonstrates college readiness by:

(A) [demonstrates college readiness by] achieving the minimum passing standards on the reading section, under the provisions of the Texas Success Initiative as set forth in §4.57 of this title (relating to College Ready and Adult Basic Education (ABE) Standards),

and/or any other [on] relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 of this title (relating to Assessment Instrument); or

(B) performing at or above the standards [demonstrates that he or she is exempt] under the provisions of the Texas Success Initiative as set forth in §4.54(a)(1)(A), (B), and (3)(B) of this title (relating to Exemptions, Exceptions, and Waivers) on the ACT, SAT, English III STAAR end-of-course assessment (EOC), or Algebra II EOC.

[(2) A high school student is also eligible to enroll in academic dual credit courses that require demonstration of TSI college readiness in reading, writing, and/or mathematics under the following conditions:]

[(A) Courses that require demonstration of TSI college readiness in reading and/or writing:]

[(i) if the student achieves a Level 2 final recommended score, as defined by the Texas Education Agency (TEA), on the English II State of Texas Assessment of Academic Readiness End of Course (STAAR EOC); or]

[(ii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the reading test; or]

[(iii) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in English or an English score of 435 on the ACT-Aspire.]

[(B) Courses that require demonstration of TSI college readiness in mathematics:]

[(i) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra I STAAR EOC and passing grade in the Algebra II course; or]

[(ii) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra II STAAR EOC; or]

[(iii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the mathematics test; or]

[(iv) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in mathematics or a mathematics score of 431 on the ACT-Aspire.]

[(3) A high school student is eligible to enroll in workforce education dual credit courses contained in a Level 1 certificate program, or a program leading to a credential of less than a Level 1 certificate, at a public junior college or public technical institute and shall not be required to provide demonstration of college readiness or dual credit enrollment eligibility.]

(3) [(4)] A high school student is eligible to enroll in workforce education dual credit courses as defined in §4.83 contained in a Level 2 certificate or applied associate degree program if the student demonstrates college readiness by [under the following conditions]:

(A) achieving the minimum passing standards on the reading section, under the provisions of the Texas Success Initiative as set forth in §4.57 of this title (relating to College Ready and Adult Basic Education (ABE) Standards), and/or any other relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 of this title (relating to Assessment Instrument); or

(B) performing at or above the standards under the provisions of the Texas Success Initiative as set forth in §4.54(a)(1)(A), (B), and (3)(B) of this title on the ACT, SAT, English III STAAR EOC, or Algebra II EOC.

[(A) Courses that require demonstration of TSI college readiness in reading and/or writing:]

[(i) if the student achieves a Level 2 final recommended score, as defined by TEA, on the English II STAAR EOC; or]

[(ii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the reading test; or]

[(iii) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in English or an English score of 435 on the ACT-Aspire.]

[(B) Courses that require demonstration of TSI college readiness in mathematics:]

[(i) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra I STAAR EOC and passing grade in the Algebra II course; or]

[(ii) if the student achieves a Level 2 final recommended score, as defined by TEA, on the Algebra II STAAR EOC; or]

[(iii) if the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the mathematics test; or]

[(iv) if the student achieves a composite score of 23 on the PLAN with a 19 or higher in mathematics or a mathematics score of 431 on the ACT-Aspire.]

(4) [(C)] A student who is exempt from taking TAKS or STAAR EOC assessments may be otherwise evaluated by an institution to determine eligibility for enrolling in workforce education dual credit courses.

(5) - (8) (No change.)

(c) - (f) (No change.)

(g) Academic Policies and Student Support Services.

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

(3) Student advising requirements as defined in §130.104 and/or §51.9685 apply to high school students enrolled in dual credit programs.

(h) - (i) (No change.)

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600292

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

## 19 TAC §4.278

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.278, concerning Approval of Off-Campus and Self-Supporting Courses and Program for Public Institutions. The intent of these amendments is to clarify the approval authority of higher education regional councils over dual credit partnerships between secondary schools and Texas public colleges and universities.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be the clarification of the approval authority of higher education regional councils over dual credit partnerships between secondary schools and Texas public colleges and universities. There are no significant economic costs anticipated to persons and institutions who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amended section is proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.0512, which authorizes the Coordinating Board to approve courses for credit and distance education programs, including off-campus and self-supporting programs, and Chapter 130, Subchapter A, §130.001 and Chapter 28, Subchapter A, §28.009, which provide for the offering of dual credit courses by public institutions of higher education.

The amended section affects the implementation of Texas Education Code, §§61.0512, 130.880, and 28.009.

### §4.278. *Function of Regional Councils.*

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

(e) A public community college may enter into an agreement to offer dual credit courses with a high school located in the service area of another public community college without additional regional council approval. [~~up to a maximum of three courses per student per academic year, except to the extent approved by the Commissioner of Texas Education Agency. This provision does not apply to students enrolled in approved early college high school programs.~~]

(f) Public community colleges shall submit for the appropriate Regional Council's review all off-campus lower-division courses proposed for delivery to sites outside their service areas.

(g) - (h) (No change.)

(i) Universities, health-related institutions, public technical colleges, and Lamar state colleges may enter into an agreement to offer lower-division dual credit courses with a school district and/or high school without additional regional council approval. [~~that makes such a request, and regional council approval is not required in order to offer requested lower-division, dual credit courses.~~]

(j) (No change.)

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600293

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114

## CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER A. DEFINITIONS

### 19 TAC §13.1

The Texas Higher Education Coordinating Board (Coordinating Board or THECB) proposes amendments to Chapter 13, Subchapter A, §13.1, concerning Definitions. Specifically, the proposed amendments expand the definition of functional categories to include scholarships and fellowships, depreciation, and auxiliary enterprises. The citation for the definition of General Academic Institutions is corrected from Texas Education Code, §61 to §61.003(3). The term "Higher Education Assistance Fund (HEAF)" is changed to "Higher Education Fund (HEF)" to conform to the General Appropriations Act. The definition of independent institutions of higher education is expanded to include the citation Texas Education Code, §61.003(15), which lists the criteria for being an independent institution of higher education, and the citation regarding exemption from taxation is corrected from Article V of the Texas Constitution to Article VIII. The definition of Institution of Higher Education or Institution is expanded to include public state colleges to conform to Texas Education Code, §61.003(8). In the definition of Local Funds, "educational general" is changed to "educational and general" to conform to the Texas Education Code. The definition of Non-Degree-Credit Developmental Courses is deleted because this term is not used in Chapter 13. Definition numbers 22, 23, and 24 are renumbered to 21, 22, and 23, respectively, because definition number 21, Non-Degree-Credit Developmental Courses, is deleted.

Dr. Julie Eklund, Assistant Commissioner, THECB, has determined that for each year of the first five years the section is in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to David Young, Senior Director, Special Projects, Strategic Planning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, [david.young@thecb.state.tx.us](mailto:david.young@thecb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.065, which provides the Coordinating Board and the Comptroller of Public Accounts with the authority to prescribe

a uniform system of financial accounting and reporting for institutions of higher education.

The amendments affect Texas Administrative Code, Title 19, Chapter 13, Financial Planning, Subchapter A, Definitions.

*§13.1. Definitions.*

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

(1) - (9) (No change.)

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

(11) General Academic Teaching Institution--Any college, university, or institution so classified in Texas Education Code, §61.003(3), [Chapter 61, Texas Education Code,] or created and so classified by law.

(12) - (13) (No change.)

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

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

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

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

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

(16) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in Texas Education Code, §61.003.

(17) - (18) (No change.)

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

(20) (No change.)

~~[(21) Non-Degree-Credit Developmental Courses--Courses intended for remedial or compensatory education that bear only institutional credit and are not counted toward the total for a degree or certificate program.]~~

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

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

(23) [~~(24)~~] Semester Credit Hour--A unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct

instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

The agency certifies that legal counsel has reviewed the 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 January 25, 2016.

TRD-201600294

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER C. BUDGETS

### 19 TAC §§13.42, 13.43, 13.47

The Texas Higher Education Coordinating Board (THECB or Coordinating Board) proposes amendments to §§13.42, 13.43, and 13.47, concerning Budgets. Specifically, the proposed amendments change "Higher Education Assistance Fund (HEAF)" to "Higher Education Fund (HEF)", "HEAF" to "HEF", and "HEAF-backed" to "HEF-backed" to conform to the General Appropriations Act.

Dr. Julie Eklund, Assistant Commissioner, THECB, has determined that for each year of the first five years the sections are in effect, there will not be a fiscal impact to the state.

Dr. Eklund has determined that there will be no impact on the public. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted to David Young, Senior Director, Special Projects, Strategic Planning and Funding, THECB, 1200 East Anderson Lane, Austin, Texas 78752, [david.young@theeb.state.tx.us](mailto:david.young@theeb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.065, which provides the Coordinating Board and the Comptroller of Public Accounts with the authority to prescribe a uniform system of financial accounting and reporting for institutions of higher education.

The amendments affect Texas Administrative Code, Title 19, Chapter 13, Financial Planning, Subchapter C, Budgets.

*§13.42. Budget Approval.*

(a) The governing board of each institution shall approve an itemized current operating budget on or before September 1 of each year.

(b) The governing boards of The University of Texas System and the Texas A&M University System shall approve Permanent University Fund (PUF) and Available University (AUF) budgets on or before September 1 of each year.

(c) The governing board of each institution eligible to receive HEF [~~HEAF~~] appropriations shall approve a HEF [~~HEAF~~] budget on or before September 1 of each year.

§13.43. *Distribution of Budgets.*

Copies of the current operating funds, PUF/AUF, and HEF [HEAF] budget shall be furnished to the Board and Legislative Budget Board electronically and bound paper copies to the Governor's Budget and Planning Office and Legislative Reference Library by December 1 of each fiscal year. Copies shall be maintained in the institution's library.

§13.47. *Format for Higher Education [Assistance] Fund (HEF) [(HEAF)] Budget.*

The HEF [HEAF] budget shall:

(1) include all projects approved for funding with HEF [HEAF] bonds by component institution,

(2) include all debt service payments on HEF-backed [HEAF-backed] bonds by component institution, and

(3) include all capital equipment and library books to be purchased during the fiscal year with HEF [HEAF] funds.

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 January 25, 2016.

TRD-201600298

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



CHAPTER 15. NATIONAL RESEARCH  
UNIVERSITIES  
SUBCHAPTER C. NATIONAL RESEARCH  
UNIVERSITY FUND

19 TAC §15.43

The Texas Higher Education Coordinating Board (Coordinating Board) proposes to amend §15.43, concerning the eligibility criteria to receive distributions from the National Research University Fund. The intent of the amendments is to clarify: the academic achievement of a freshman class, faculty distinctions are counted for each of two years measured, and faculty awards of distinction are counted only in the year the award was given.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rule.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be the clarification of how criteria of eligibility for the National Research University Fund are measured. There are no significant economic costs anticipated to persons and institutions who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher

Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 62, Subchapter G, §62.146, which authorized the Coordinating Board to prescribe standard methods of reporting for determining the eligibility of institutions to receive distributions from the National Research University Fund.

The amendments affect the implementation of Texas Education Code, Chapter 62, Subchapter G, National Research University Fund.

§15.43. *Eligibility.*

(a) (No change.)

(b) A general academic teaching institution is eligible to receive an initial distribution from the Fund appropriated for each state fiscal year if:

(1) the institution is designated as an emerging research university under the coordinating board's accountability system;

(2) in each of the two state fiscal years preceding the state fiscal year for which the appropriation is made, the institution expended at least \$45 million in restricted research funds; and

(3) the institution satisfies at least four of the following six criteria:

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

(C) in each of the two academic years preceding the state fiscal year for which the appropriation is made, the entering freshman class of the institution demonstrated high academic achievement as reflected in the following criteria:

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

(iii) The composition of the institution's first-time entering freshman class demonstrates progress toward [achieving the goals of the Board's Closing the Gaps report by] reflecting the population of the state or the institution's region with respect to underrepresented students and shows a commitment to improving the academic performance of underrepresented students. One way in which this could be accomplished is by active participation in one of the Federal TRIO Programs, such as having one or more McNair Scholars in a particular cohort.

(D) (No change.)

(E) in each of the two academic years preceding the state fiscal year for which the appropriation is made, the faculty of the institution was of high quality as reflected in the following:

(i) The cumulative number of tenured/tenure-track faculty who have achieved national or international distinction through recognition as a member of one of the National Academies (including National Academy of Science, National Academy of Engineering, Academy of Arts and Sciences, and Institute of Medicine) or are Nobel Prize recipients is equal to or greater than 5 for each year; or

(ii) The annual number of tenured/tenure-track faculty who have received during a given academic year awards of [been awarded] national or international distinction [during a specific state fiscal year] in any of the following categories is equal to or greater than 7 for each year.

(I) - (XXV) (No change.)

(iii) (No change.)

(F) (No change.)

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600300

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## CHAPTER 26. PROGRAMS OF STUDY

### SUBCHAPTER I. HOSPITALITY AND TOURISM PROGRAMS OF STUDY ADVISORY COMMITTEE

#### 19 TAC §§26.261 - 26.267

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.261 - 26.267 concerning Programs of Study, Hospitality and Tourism Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Hospitality and Tourism Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Hospitality and Tourism Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new rules may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.261. Authority and Specific Purposes of the Hospitality and Tourism Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Hospitality and Tourism Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.262. Definitions.

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

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

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

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.263. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

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

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.264. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.265. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.266. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Hospitality and Tourism Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Hospitality and Tourism Programs of Study Curricula; and

(3) Any other issues related to the Hospitality and Tourism Programs of Study Curricula as determined by the Board.

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

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600305

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER J. HUMAN SERVICES PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.281 - 26.287

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.281 - 26.287 concerning Programs of Study, Human Services Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Human Services Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a re-

sult of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Human Services Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.281. Authority and Specific Purposes of the Human Services Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Human Services Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.282. Definitions.

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

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

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

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.283. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the

institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

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

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.284. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.285. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.286. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Human Services Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Human Services Programs of Study Curricula; and

(3) Any other issues related to the Human Services Programs of Study Curricula as determined by the Board.

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

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600306

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER K. INFORMATION TECHNOLOGY PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.301 - 26.307

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.301 - 26.307 concerning Programs of Study, Information Technology Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Information Technology Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Information Technology Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005.

§26.301. Authority and Specific Purposes of the Information Technology Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Information Technology Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.302. Definitions.

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

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

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

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.303. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

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

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.304. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.305. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.306. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Information Technology Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Information Technology Programs of Study Curricula; and

(3) Any other issues related to the Information Technology Programs of Study Curricula as determined by the Board.

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

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600307

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER L. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.321 - 26.327

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.321 - 26.327 concerning Programs of Study, Law, Public Safety, Corrections, and Security Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Law, Public Safety, Corrections, and Security Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Law, Public Safety, Corrections, and Security Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop

programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.321. Authority and Specific Purposes of the Law, Public Safety, Corrections, and Security Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Law, Public Safety, Corrections, and Security Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.322. Definitions.

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

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

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

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.323. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

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

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.324. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.325. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.326. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Law, Public Safety, Corrections, and Security Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Law, Public Safety, Corrections, and Security Programs of Study Curricula; and

(3) Any other issues related to the Law, Public Safety, Corrections, and Security Programs of Study Curricula as determined by the Board.

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

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600308

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER M. MANUFACTURING PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.341 - 26.347

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.341 - 26.347 concerning Programs of Study, Manufacturing Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Manufacturing Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Manufacturing Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.341. Authority and Specific Purposes of the Manufacturing Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Manufacturing Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.342. Definitions.

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

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

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

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.343. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

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

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.344. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.345. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.346. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Manufacturing Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Manufacturing Programs of Study Curricula; and

(3) Any other issues related to the Manufacturing Programs of Study Curricula as determined by the Board.

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

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600309

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114

◆   ◆   ◆

## SUBCHAPTER N. MARKETING PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.361 - 26.367

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.361 - 26.367 concerning Programs of Study, Marketing Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Marketing Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Marketing Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005.

#### §26.361. Authority and Specific Purposes of the Marketing Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Marketing Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

#### §26.362. Definitions.

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

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

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

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

#### §26.363. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

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

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

#### §26.364. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

#### §26.365. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

#### §26.366. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Marketing Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Marketing Programs of Study Curricula; and

(3) Any other issues related to the Marketing Programs of Study Curricula as determined by the Board.

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

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600310

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER O. SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.381 - 26.387

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.381 - 26.387 concerning Programs of Study, Science, Technology, Engineering, and Mathematics Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Science, Technology, Engineering, and Mathematics Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Science, Technology, Engineering, and Mathematics Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which

provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.381. Authority and Specific Purposes of the Science, Technology, Engineering and Mathematics Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Science, Technology, Engineering and Mathematics Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.382. Definitions.

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

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

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

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.383. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

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

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.384. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.385. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.386. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Science, Technology, Engineering and Mathematics Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Science, Technology, Engineering and Mathematics Programs of Study Curricula; and

(3) Any other issues related to the Science, Technology, Engineering and Mathematics Programs of Study Curricula as determined by the Board.

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

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600311

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114



## SUBCHAPTER P. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS PROGRAMS OF STUDY ADVISORY COMMITTEE

### 19 TAC §§26.401 - 26.407

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§26.401 - 26.407 concerning Programs of Study Transportation, Distribution and Logistics Programs of Study Advisory Committee. The proposed rules authorize the Coordinating Board to create an advisory committee to develop programs of study specific to the Transportation, Distribution and Logistics Career Cluster. The newly added rules will affect students when programs of study developed by the committee are adopted by the Coordinating Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding the rules.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree in the Transportation, Distribution and Logistics Career Cluster and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed new sections may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at [AQWComments@THECB.state.tx.us](mailto:AQWComments@THECB.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter S, §61.8235 and Texas Government Code, Chapter 2110, §2110.0012 and §2110.005, which provide the Coordinating Board with the authority to develop programs of study curricula with the assistance of advisory committees.

The new sections affect Texas Education Code, §61.8235 and Texas Government Code, §2110.0012 and §2110.005

§26.401. Authority and Specific Purposes of the Transportation, Distribution, and Logistics Programs of Study Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in the Texas Education Code, §61.8235.

(b) Purpose. The Transportation, Distribution, and Logistics Programs of Study Advisory Committee is created to provide the Commissioner and the Board with guidance regarding the programs of study curricula specific to this career cluster.

§26.402. Definitions.

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

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

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

(3) Program of Study Curricula--The block of courses which progress in content specificity by beginning with all aspects of an industry or career cluster and incorporate rigorous college and career readiness standards, including career and technical education standards that address both academic and technical content which incorporate multiple entry and exit points with portable demonstrations of technical or career competency, which may include credit transfer agreements or industry-recognized certifications.

(4) Institutions of Higher Education--As defined in Texas Education Code, §61.003(2) and §61.003(7).

§26.403. Committee Membership and Officers.

(a) The advisory committee shall be composed of representatives of secondary and postsecondary education, business and industry, and other state agencies, licensing bodies and other career and technical education experts.

(b) Each institution of higher education which offers a degree program for which a program of study curriculum is proposed shall be offered participation on the advisory committee.

(c) At least a majority of the members of the advisory committee named under this section shall be faculty members of an institution of higher education. An institution shall consult with the faculty of the institution before nominating or recommending a person to the board as the institution's representative on an advisory committee.

(d) Board staff will recommend for Board appointment individuals who are nominated by institutions of higher education.

(e) Members of the committee shall select co-chairs, who will be responsible for conducting meetings and conveying committee recommendations to the Board.

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

(g) Members shall serve staggered terms of up to three years. The terms of chairs and co-chairs (if applicable) will be two years dating from their election.

§26.404. Duration.

The Committee shall be abolished no later than January 31, 2020 in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

§26.405. Meetings.

The Committee shall meet as necessary. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the Committee.

§26.406. Tasks Assigned to the Committee.

Tasks assigned to the Committee include:

(1) Advise the Board regarding the Transportation, Distribution, and Logistics Programs of Study Curricula;

(2) Provide Board staff with feedback about processes and procedures related to the Transportation, Distribution, and Logistics Programs of Study Curricula; and

(3) Any other issues related to the Transportation, Distribution, and Logistics Programs of Study Curricula as determined by the Board.

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

The Committee shall report recommendations to the Board. The Committee shall also report Committee activities to the Board to allow the Board to properly evaluate the Committee work, usefulness, and the costs related to the Committee existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600312

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 427-6114

◆ ◆ ◆  
**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 102. EDUCATIONAL PROGRAMS**

**SUBCHAPTER AA. COMMISSIONER'S  
RULES CONCERNING EARLY CHILDHOOD  
EDUCATION PROGRAMS**

**19 TAC §102.1003**

The Texas Education Agency (TEA) proposes new §102.1003, concerning the high-quality prekindergarten grant program. The proposed new section would outline the requirements of a new grant program authorized by House Bill (HB) 4, 84th Texas Legislature, Regular Session, 2015.

Texas Education Code (TEC), §29.165, as added by HB 4, 84th Texas Legislature, 2015, requires the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program.

Proposed new 19 TAC §102.1003, High-Quality Prekindergarten Grant Program, would outline school district and charter school eligibility for grant funding and qualifications for students eligible to receive instruction under the grant program. The proposed new section would require school districts and charter schools to meet the Texas Prekindergarten Guidelines (updated 2015). It would also require districts and charter schools to measure the progress of each student in meeting the recommended outcomes identified in the Texas Prekindergarten Guidelines (updated 2015) using a progress monitoring tool selected from the commissioner's list of approved prekindergarten instruments in order to be eligible to receive grant funding under this program.

The proposed new section would outline the requirements teachers must meet in order to provide instruction in a high-quality prekindergarten program. The proposal would also identify in rule the family engagement strategies that districts and charter schools would be required to address in a family engagement plan in order to be eligible to receive grant funding under this program. The proposed new section would also identify reporting requirements related to the grant program.

As required by statute, the proposed new section would require school districts and charter schools to report each year to the TEA through the Public Education Information Management System (PEIMS) the curriculum used in the high-quality prekindergarten program classes and a description and the results of each prekindergarten instrument used in the high-quality prekindergarten program classes. Additionally, a school district would be required to select and implement appropriate methods for evaluating the district's program classes by measuring student progress and make data from the results of program evaluations available to parents.

The proposed new section would require school districts and charter schools to maintain documentation of compliance with

grant requirements in a format prescribed by the TEA through the request for application.

**FISCAL NOTE.** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the new section is in effect there will be no costs for state or local government as a result of enforcing or administering the new section.

**PUBLIC BENEFIT/COST NOTE.** Ms. Martinez has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to provide districts with an opportunity to expand or enhance high-quality prekindergarten programs for qualifying students. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES.** There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**REQUEST FOR PUBLIC COMMENT.** The public comment period on the proposal begins February 5, 2016, and ends March 7, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A public hearing was held on December 1, 2015, to solicit input on information to include in the new rule. A request for an additional public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 5, 2016.

**STATUTORY AUTHORITY.** The new section is proposed under the Texas Education Code (TEC), §29.1532, as amended by House Bill (HB) 4, 84th Texas Legislature, 2015, which adds a requirement that school districts that offer prekindergarten classes, including a high-quality prekindergarten program class, report a description and the results of each type of assessment instrument if the district elects to administer an assessment instrument to students enrolled in district and campus prekindergarten program classes and report curricula used in the district's prekindergarten program classes; TEC, §29.165, as added by HB 4, 84th Texas Legislature, 2015, which requires the commissioner to by rule establish a grant funding program under which funds are awarded to school districts and open-enrollment charter schools to implement a high-quality prekindergarten grant program; TEC, §29.166, as added by HB 4, 84th Texas Legislature, 2015, which addresses the student qualifications and general school district and charter eligibility for funding under this grant program; TEC, §29.167, as added by HB 4, 84th Texas Legislature, 2015, which requires school districts and charter schools to select and implement a curriculum for a high-quality prekindergarten grant program that includes the prekindergarten guidelines established by the TEA, measures the progress of students in meeting the recommended learning outcomes, and does not use national curriculum standards developed by the Common Core State Standards Initiative. This section also outlines requirements that each teacher of a prekindergarten program class must meet, including employment as a prekindergarten teacher in a school district that has received approval

from the commissioner for the district's prekindergarten-specific instructional training plan that the teacher uses in the teacher's prekindergarten classroom, and allows for equivalent qualifications; TEC, §29.168, as added by HB 4, 84th Texas Legislature, 2015, which requires a school district or charter school to develop and implement a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. The local family engagement plan must be based on the family engagement strategies established by the TEA in collaboration with other state agencies; TEC, §29.169, as added by HB 4, 84th Texas Legislature, 2015, which requires a school district to select and implement appropriate methods for evaluating the district's program classes by measuring student progress and make data from the results of program evaluations available to parents; and TEC, §29.172, as added by HB 4, 84th Texas Legislature, 2015, which permits the commissioner of education to adopt rules necessary to implement this grant program.

**CROSS REFERENCE TO STATUTE.** The new section implements the TEC, §§29.1532, 29.165-29.169, and 29.172, as amended and added by HB 4, 84th Texas Legislature, 2015.

§102.1003. High-Quality Prekindergarten Grant Program.

(a) From funds appropriated for this purpose, all eligible school districts and open-enrollment charter schools may receive grant funding for each qualifying student in average daily attendance in a high-quality prekindergarten program in the district or charter school.

(1) The amount of funding per qualifying student will be determined based on the total amount of appropriated funding, the number of eligible grant applicants, and the number of qualifying students served by each eligible grant applicant. Funding under this program for each qualifying student in attendance for the entire instructional period on a school day shall not exceed \$1,500.

(2) Each applicant seeking funding through the high-quality prekindergarten grant program authorized by the Texas Education Code (TEC), §29.165, must submit an application in a format prescribed by the Texas Education Agency (TEA) through a request for application (RFA).

(3) Each applicant must meet all the requirements established under the TEC, Chapter 29, Subchapter E-1.

(b) An eligible applicant receiving funds under this program must provide educational services to qualifying students. A student qualifies for additional funding under this grant program if the student is four years of age on September 1 of the year the student begins the program and:

(1) is unable to speak and comprehend the English language;

(2) is educationally disadvantaged;

(3) is a homeless child, as defined by 42 United States Code §11434a, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child;

(4) is the child of an active duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;

(5) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; or

(6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by the Texas Family Code, §262.201.

(c) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall implement a curriculum for a high-quality prekindergarten grant program that addresses all of the Texas Prekindergarten Guidelines (updated 2015) in the following domains:

- (1) social and emotional development;
- (2) language and communication;
- (3) emergent literacy reading;
- (4) emergent literacy writing;
- (5) mathematics;
- (6) science;
- (7) social studies;
- (8) fine arts;
- (9) physical development and health; and
- (10) technology.

(d) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall measure:

(1) the progress of each student in meeting the recommended end of prekindergarten year outcomes identified in the Texas Prekindergarten Guidelines (updated 2015) using a progress monitoring tool included on the commissioner's list of approved prekindergarten instruments that measures:

- (A) social and emotional development;
- (B) language and communication;
- (C) emergent literacy reading;
- (D) emergent literacy writing; and
- (E) mathematics; and

(2) the preparation of each student for kindergarten using a kindergarten readiness instrument for reading.

(e) To be eligible to receive grant funding under this program, each teacher of a high-quality prekindergarten grant program must be certified under the TEC, Chapter 21, Subchapter B, and have one of the following additional qualifications:

- (1) a Child Development Associate (CDA) credential;
- (2) a certification offered through a training center accredited by Association Montessori Internationale or through the Montessori Accreditation Council for Teacher Education;
- (3) at least eight years' experience of teaching in a nationally accredited child care program;
- (4) a graduate or undergraduate degree in early childhood education or early childhood special education; or
- (5) be employed as a prekindergarten teacher in a school district that has ensured that:

(A) prior to assignment in a prekindergarten class, teachers who provide prekindergarten instruction have completed at least 150 cumulative hours of continuing professional education (CPE) over a consecutive five-year period;

(B) teachers who have not completed training required in subparagraph (A) of this paragraph prior to assignment in a prekindergarten class complete the first 30 hours before the end of the 2016-2017 school year and complete the additional CPE hours in the subsequent four years in order to continue providing instruction in a high-quality prekindergarten classroom;

(C) at least half of the hours required by subparagraph (A) or (B) of this paragraph are completed in face-to-face training opportunities that include experiential learning, practical application, and direct interaction with master teachers; and

(D) training used to meet the requirement in subparagraph (A) or (B) of this paragraph addresses all ten domains in the Texas Prekindergarten Guidelines (updated 2015).

(f) To be eligible to receive grant funding under this program, a school district or an open-enrollment charter school shall develop and implement a family engagement plan to assist the district in achieving and maintaining high levels of family involvement and positive family attitudes toward education. An effective family engagement plan creates a foundation for the collaboration of mutual partners, embraces the individuality and uniqueness of families, and promotes a culture of learning that is child centered, age appropriate, and family driven.

(1) The following terms, when used in this section, shall have the following meanings.

(A) Family--Adults responsible for the child's care and children in the child's life who support the early learning and development of the child.

(B) Family engagement--The mutual responsibility of families, schools, and communities to build relationships to support student learning and achievement and to support family well-being and the continuous learning and development of children, families, and educators. Family engagement is fully integrated in the child's educational experience and supports the whole child and is both culturally responsive and linguistically appropriate.

(2) The family engagement plan shall:

(A) facilitate family-to-family support using strategies such as:

(i) creating a safe and respectful environment where families can learn from each other as individuals and in groups;

(ii) inviting former program participants, including families and community volunteers, to share their education and career experiences with current families; and

(iii) ensuring opportunities for continuous participation in events designed for families by families such as training on family leadership;

(B) establish a network of community resources using strategies such as:

(i) building strategic partnerships;

(ii) leveraging community resources;

(iii) monitoring and evaluating policies and practices to stimulate innovation and create learning pathways;

(iv) establishing and maintaining partnerships with businesses, faith-based organizations, and community agencies;

(v) identifying support from various agencies, including mental and physical health providers;

(vi) partnering with local community-based organizations to create a family-friendly transition plan for students arriving from early childhood settings;

(vii) providing and facilitating referrals to family support or educational groups based on family interests and needs;

(viii) communicating short- and long-term program goals to all stakeholders; and

(ix) identifying partners to provide translators and culturally relevant resources reflective of home language;

(C) increase family participation in decision making using strategies such as:

(i) developing and supporting a family advisory council;

(ii) developing, adopting, and implementing identified goals within the annual campus/school improvement plan targeting family engagement;

(iii) developing and supporting leadership skills for family members and providing opportunities for families to advocate for their children/families;

(iv) collaborating with families to develop strategies to solve problems and serve as problem solvers;

(v) engaging families in shaping program activities and cultivating the expectation that information must flow in both directions to reflect two-way communication;

(vi) developing, in collaboration with families, clearly defined goals, outcomes, timelines, and strategies for assessing progress;

(vii) providing each family with an opportunity to review and provide input on program practices, policies, communications, and events in order to ensure the program is responsive to the needs of families; and

(viii) using appropriate tools such as surveys or focus groups to gather family feedback on the family engagement plan;

(D) equip families with tools to enhance and extend learning using strategies such as:

(i) designing or implementing existing home educational resources to support learning at home while strengthening the family/school partnership;

(ii) providing families with information and/or training on creating a home learning environment connected to formal learning opportunities;

(iii) equipping families with resources and skills to support their children through the transition to school and offering opportunities for families and children to visit the school in advance of the prekindergarten school year;

(iv) providing complementary home learning activities for families to engage in at home with children through information presented in newsletters, online technology, social media, parent/family-teacher conferences, or other school- or center-related events;

(v) providing families with information, best practices, and training related to age-appropriate developmental expectations;

(vi) emphasizing benefits of positive family practices such as attachment and nurturing that complement the stages of children's development;

(vii) collaborating with families to appropriately respond to children's behavior in a non-punitive, positive, and supportive way;

(viii) encouraging families to reflect on family experiences and practices in helping children; and

(ix) assisting families to implement best practices that will help achieve the goals and objectives identified to meet the needs of the child and family;

(E) develop staff skills in evidence-based practices that support families in meeting their children's learning benchmarks using strategies such as:

(i) providing essential professional development for educators in understanding communication and engagement with families, including training on communicating with families in crisis;

(ii) promoting and developing family engagement as a core strategy to improve teaching and learning among all educators and staff; and

(iii) developing staff skills to support and use culturally diverse, culturally relevant, and culturally responsive family engagement strategies; and

(F) evaluate family engagement efforts and use evaluations for continuous improvement using strategies such as:

(i) conducting goal-oriented home visits to identify strengths, interests, and needs;

(ii) developing data collection systems to monitor family engagement and focusing on engagement of families from specific populations to narrow the achievement gap;

(iii) using data to ensure alignment between family engagement activities and district/school teaching and learning goals and to promote continuous family engagement;

(iv) ensuring an evaluation plan is an initial component that guides action;

(v) using a cyclical process to ensure evaluation results are used for continuous improvement and adjustment; and

(vi) ensuring teachers play a role in the family engagement evaluation process.

(g) In a format prescribed by the TEA, a school district or an open-enrollment charter school that receives funding under this grant shall:

(1) report the curriculum used in the high-quality prekindergarten program classes as required by subsection (c) of this section;

(2) report a description and the results of each prekindergarten instrument used in the high-quality prekindergarten program classes as required by subsection (d) of this section; and

(3) report:

(A) a description of each kindergarten readiness instrument used in the district or charter school to measure the effectiveness of the district's or charter school's high-quality prekindergarten program classes as required by subsection (d) of this section; and

(B) the results for 100% of the district's or charter school's kindergarten students on the kindergarten readiness instrument.

(h) A school district or an open-enrollment charter school that receives funding under this grant shall:

(1) select and implement appropriate methods for evaluating the district's or charter school's high-quality prekindergarten program by measuring student progress; and

(2) make data from the results of program evaluations available to parents.

(i) A school district or an open-enrollment charter school that receives funding under this grant may only use the funding to improve the quality of the district's or charter school's high-quality prekindergarten program. Program funds must be used in accordance with the requirements stated in the RFA.

(j) A school district or an open-enrollment charter school that receives funding under this grant shall maintain locally and provide at the TEA's request the necessary documentation to ensure fidelity of high-quality prekindergarten program implementation.

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 January 25, 2016.

TRD-201600318

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-1497



## CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

### 19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The proposed amendment would adopt by reference the *2015-2016 Student Attendance Accounting Handbook*.

The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published

on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the student attendance accounting handbook for the 2015-2016 school year.

Significant changes to the *2015-2016 Student Attendance Accounting Handbook* from the *2014-2015 Student Attendance Accounting Handbook* include the following.

#### Section 3

The term "district students" would be replaced with "early college high school students and students taking dual credit courses" in the section on waivers related to students taking dual credit courses at institutions of higher education with calendars beginning before the fourth Monday in August.

An update would be made to the section regarding a student's entitlement to attend school in a particular school district while in the Department of Family and Protective Services conservatorship.

The age for allowing a district to withdraw a student would be updated from 18 to 19. Additionally, updates would be made to the age for compulsory attendance.

In the section relating to requirements for a student to be considered present for FSP purposes, updates would be made regarding activities under a service plan under the Texas Family Code, Chapter 263, Subchapter B.

A recommendation would be added for districts and charter schools to consider building into the calendar an additional 840 minutes, which is equivalent to two days, in the event of school closures due to bad weather or safety issues.

#### Section 5

The requirement for a practicum course to include classroom instruction to average one class period each day for every school week would be removed.

The title of the career and technical education (CTE) Problems and Solutions subsection would be updated to remove the phrase "Formerly CTE Independent Study."

#### Section 7

The subsection on prekindergarten eligibility based on a student being limited English proficient would be updated to allow districts to begin the preregistration process after April 1 of each year.

#### Section 11

The eligibility requirements, document requirements, and limitations for dual credit courses would be updated in the subsection regarding student eligibility for dual credit courses.

Updates would be made to the requirements for students in the Optional Flexible School Day Program to generate full-day funding for attendance.

#### Throughout the Handbook

References to school days would be converted to minutes in accordance with House Bill 2610, 84th Texas Legislature, 2015.

References to the Prekindergarten Early Start Grant Program would be removed.

The proposed amendment would place the specific procedures contained in the *2015-2016 Student Attendance Accounting Handbook* in the Texas Administrative Code. The TEA distributes FSP funds according to the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through the Public Education Information Management System (PEIMS).

The handbook has long stated that school districts and open-enrollment charter schools must keep all student attendance documentation for five years from the end of the school year. Any new student attendance documentation required to be kept would correspond with the student attendance accounting requirement changes described previously.

**FISCAL NOTE.** Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

**PUBLIC BENEFIT/COST NOTE.** Dr. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES.** There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**REQUEST FOR PUBLIC COMMENT.** The public comment period on the proposal begins February 5, 2016, and ends March 7, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 5, 2016.

**STATUTORY AUTHORITY.** The amendment is proposed under the Texas Education Code (TEC), §25.081, as amended by House Bill (HB) 2610, 84th Texas Legislature, 2015, which authorizes that each school year each school district and charter school provides for at least 75,600 minutes of instruction, including intermissions and recesses, for students. In addition, the commissioner may approve the instruction of students for fewer than 75,600 minutes if a calamity causes the school closing; TEC, §25.0812, as added by HB 2610, 84th Texas Legislature, 2015, which requires that school districts and charter schools may not schedule the last day of school for students before May 15; TEC, §30A.153, which requires the commissioner to adopt rules for the implementation of Foundation School Program (FSP) funding for the state virtual school network, including rules regarding attendance accounting; and TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action

and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the FSP.

**CROSS REFERENCE TO STATUTE.** The amendment implements the Texas Education Code, §§25.081, as amended by House Bill (HB) 2610, 84th Texas Legislature, 2015; 25.0812, as added by HB 2610, 84th Texas Legislature, 2015; 30A.153; and 42.004.

§129.1025. *Adoption by Reference: Student Attendance Accounting Handbook.*

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §42.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2015-2016 [~~2014-2015~~] are described in the official Texas Education Agency (TEA) publication 2015-2016 [~~2014-2015~~] *Student Attendance Accounting Handbook*, which is adopted by this reference as the agency's official rule. A copy of the 2015-2016 [~~2014-2015~~] *Student Attendance Accounting Handbook* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the 2015-2016 [~~2014-2015~~] *Student Attendance Accounting Handbook* and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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 January 25, 2016.

TRD-201600319

Cristina De La Fuente-Valadez  
Director, Rulemaking  
Texas Education Agency

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-1497



### 19 TAC §129.1031

The Texas Education Agency (TEA) proposes new §129.1031, concerning reporting off-campus programs. The proposed new section would reflect changes in statute made by House Bill (HB) 2812, 84th Texas Legislature, 2015.

HB 2812, 84th Texas Legislature, 2015, amended the Texas Education Code (TEC), §42.005, and added the TEC, §42.0052, to allow time spent in an approved off-campus instructional program to count toward minutes required to determine average daily attendance.

The current attendance accounting rules allow students who are participating in a dual credit program to count time spent in the

dual credit course toward average daily attendance. Proposed new 19 TAC §129.1031, Reporting Off-Campus Programs, would allow time spent in an off-campus instructional program offered by an accredited institution of higher education to count toward average daily attendance, even if the student is not earning dual credit for participation in the program. The intent of the law, as expressed when the bill was amended on the senate floor, was to allow students to earn state funding if they are taking a college course similar to a dual credit course even if that course is not earning high school credit. Consequently, the requirements of the proposed new section are similar to those for dual credit courses, except that students do not have to earn high school credit to be counted for state funding purposes.

The proposed new section would require school districts and open-enrollment charter schools to follow current reporting requirements outlined in the student attendance accounting handbook. The proposed new section would require school districts and open-enrollment charter schools to maintain attendance information for students who are participating in approved off-campus instructional programs.

FISCAL NOTE. Lisa Dawn-Fisher, associate commissioner for school finance/chief school finance officer, has determined that for the first five-year period the new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the new section.

PUBLIC BENEFIT/COST NOTE. Dr. Dawn-Fisher has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to increase the number of course options available for students and allow more access to higher education opportunities for students who are near completing high school requirements but who have not yet graduated. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins February 5, 2016, and ends March 7, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 5, 2016.

STATUTORY AUTHORITY. The new section is proposed under the Texas Education Code (TEC), §42.005(h), which states that the time students spend in an off-campus instructional program approved under the TEC, §42.0052, shall be counted as part of the minimum number of instructional hours needed for a student to be considered a full-time student in average daily attendance under the TEC, Chapter 42; the TEC, §42.0052(a), which grants the commissioner the authority to approve off-campus instructional programs provided by an entity other than a school district

or open-enrollment charter school as a program in which participation by a student of a school district or charter school may be counted for the purpose of determining average daily attendance under the TEC, §42.005(h); the TEC, §42.0052(b), which grants the commissioner the authority to adopt rules regarding verification and reporting procedures concerning time spent by students participating in these off-campus instructional arrangements; and the TEC, §12.106(c), which provides for open-enrollment charter schools to receive funding and authorizes the commissioner to adopt rules to provide and account for state funding of open-enrollment charter schools under certain conditions through the TEC, Chapter 42.

CROSS REFERENCE TO STATUTE. The new section implements the TEC, §42.005(h) and §42.0052, as added by HB 2812, 84th Texas Legislature, 2015, and §12.106(c).

§129.1031. Reporting Off-Campus Programs.

(a) In accordance with the Texas Education Code, §42.0052, a board of trustees of a school district or a governing body of a charter holder may adopt a policy that allows a student to participate in an off-campus instructional program. The program must be provided only by an institution of higher education that is accredited by one of the regional accrediting associations specified in §74.25 of this title (relating to High School Credit for College Courses).

(b) To be eligible, a student must:

(1) be in Grade 11 or 12;

(2) have demonstrated college readiness as outlined in the requirements for participation in dual credit programs in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook);

(3) meet any eligibility requirements adopted by the institution of higher education specified in §74.25 of this title; and

(4) have the approval of the high school principal or other school official designated by the school district or open-enrollment charter school.

(c) Funding eligibility for a student participating in an off-campus program will include time instructed in the off-campus program. A campus may choose an alternate attendance-taking time for a group of students that is scheduled to be off-campus during the regular attendance-taking time. The alternate attendance-taking time will be in effect for the period of days or weeks for which the group is scheduled to be off-campus during the regular attendance-taking time (for example, for the semester or for the duration of employment). This alternate attendance-taking time may not be changed once it is selected for a particular group of students. If attendance is taken at an off-campus location, the school district must ensure that attendance is taken in accordance with the student attendance accounting handbook adopted under §129.1025 of this title.

(d) For a school district or an open-enrollment charter school to receive Foundation School Program funding for a student participating in an off-campus program under this section, the district or charter school must have documentation of an agreement between the district or charter school and the college.

(e) The off-campus program approved under this section must comply with rules adopted by the Texas Higher Education Coordinating Board in the Texas Administrative Code, Title 19, Part 1, with respect to teacher qualifications.

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 January 25, 2016.

TRD-201600320

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-1497



## TITLE 22. EXAMINING BOARDS

### PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

#### CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

##### SUBCHAPTER C. DEFINITIONS OF TERMS

###### 22 TAC §661.31

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.31, concerning Definitions.

The amendment proposed to §661.31 is intended to clarify the definition of "direct supervision" by specifying that the professional land surveyor is to be in the firm's office or in the field. This will allow the land surveyor to be familiar with the project he/she is supervising and better able to provide direction and instructions.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Estrada has determined that for each year of the first five-year period the rule is in effect there will be no local employment impact as a result of adoption of the proposed rule.

Mr. Estrada has determined that for each of the first five years the rule is in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro-businesses. There is no anticipated difference in cost of compliance between small and large businesses.

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

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered

to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by e-mail at [natalie.jackson@txls.texas.gov](mailto:natalie.jackson@txls.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

###### §661.31. Definitions.

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

(1) Act--The Professional Land Surveying Practices Act and Amendment.

(2) Board seal--The seal of the Board shall be as authorized by the Board.

(3) Certificate of registration and certificate of licensure--A license to practice professional land surveying in Texas. A certificate of licensure is a license to practice state land surveying in Texas.

(4) Construction estimate--"Construction estimate," as [As] used in §1071.004 of the Act, means a depiction of a possible easement route for planning purposes.

(5) Contested case--A proceeding, including, but not restricted to, ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(6) Direct supervision--Being on site either in the Firm of-fice or in the field in order [To be able] to recognize and respond to any problem that may arise; give instruction for the solution to a problem; give instructions for such research of adequate thoroughness to support the determination of the location of the boundaries of the land being surveyed; have knowledge and give instruction for [have knowledge of the research and the] collection[.] of relevant data; the placement of all monuments; the preparation and delivery of all Documents.

(7) Firm--Any business entity including but not limited to a partnership, limited partnership, association, corporation, limited liability company, limited liability partnership and/or other entity conducting business under an assumed name.

(8) Offer of surveying services--Any form of advertisement which contains the firm contact information and offers land surveying services, including but not limited to verbal offer, hard copy, electronic web site, telephone listing, written proposal or other marketing materials.

(9) Renewal--The payment of a fee annually as set by the Board within the limits of the law for the certificate of registration or the certificate of licensure.

(10) Report--Survey drawing, written description, and/or separate narrative depicting the results of a land survey performed and conducted pursuant to this Act.

(11) Rule--Any Board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the Board. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the Board and not affecting the private rights or procedures.

(12) Seal--An embossed or stamped design authorized by the Board that authenticates, confirms, or attests that a person is autho-

rized to offer and practice land surveying services to the public in the State of Texas and has legal consequence when applied.

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 January 25, 2016.

TRD-201600321

Tony Estrada

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-5263



## SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

### 22 TAC §661.55

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.55, concerning Registration of Land Surveying Firms.

The proposed amendment to §661.55(g) clarifies that the statement signed on behalf of the firm is to be submitted to the Board and requires the responsible party signing the oath to indicate their position with the firm. The proposed new subsection, §661.55(h), would require the submission of a newly signed oath if the responsible party leaves the firm.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Estrada has determined that for each year of the first five-year period the rule is in effect there will be no local employment impact as a result of adoption of the proposed rule.

Mr. Estrada has determined that for each of the first five years the rule is in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro-businesses. There is no anticipated difference in cost of compliance between small and large businesses.

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

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by e-mail

at [natalie.jackson@txls.texas.gov](mailto:natalie.jackson@txls.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1071.101, 1071.151 and 1071.452.

No other sections are affected by the proposal.

§661.55. *Registration of Land Surveying Firms.*

(a) A Firm shall not offer land surveying services until the Firm applies for and receives a Firm Registration Certificate with the Board, which identifies:

(1) The business and legal names and addresses of the association, partnership, or corporation;

(2) The names and license numbers of all persons registered or licensed under this Act employed by the association, partnership, or corporation.

(b) A person registered or licensed under the Act shall ensure that any Firm employing them complies with the filing requirements set forth in subsection (a) of this section.

(c) A person registered or licensed under the Act and employed by a Firm shall notify the Board in writing within five (5) business days prior to leaving employment or no later than five (5) business days after leaving employment.

(d) The Board may refuse to issue or renew and may suspend or revoke the registration of a firm and may impose an administrative penalty against the owner of a firm for a violation of this chapter by an employee, agent, or other representative of the entity, including a registered professional land surveyor employed by the entity at the time of the violation.

(e) The Board may refer to the Texas Attorney General for appropriate action any person registered or licensed under the Act or any Firm offering surveying services that fails to comply with this section.

(f) A nonrefundable fee, as established by the Board, will be submitted with the registration form.

(g) At the time the firm receives a certificate of registration, before it can offer land surveying services, a responsible party on behalf of the firm shall sign the following and submit it to the Board: I, \_\_\_\_\_, \_\_\_\_\_, (state position with Firm) on behalf of \_\_\_\_\_, Business Entity Certificate Number \_\_\_\_\_, hereby affirm that this Business Entity will always place the interest of the public above all others in our practice of Professional Land Surveying and this Business Entity will adhere to the Texas Professional Land Surveying Practices Act and General Rules of Procedures and Practices adopted by the Board.

(h) If the responsible party leaves the Firm, a new oath must be signed and submitted to the Board.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600322

Tony Estrada

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-5263

◆ ◆ ◆  
**22 TAC §661.57**

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.57, concerning Land Surveying Firms Compliance.

The proposed amendments to §661.57(2) clarify that the surveyor of record should be an active license holder who is on site at the Firm's office and each branch location.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Estrada has determined that for each year of the first five-year period the rule is in effect there will be no local employment impact as a result of adoption of the proposed rule.

Mr. Estrada has determined that for each of the first five years the rule is in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro-businesses. There is no anticipated difference in cost of compliance between small and large businesses.

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

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by e-mail at [natalie.jackson@txls.texas.gov](mailto:natalie.jackson@txls.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

*§661.57. Land Surveying Firms Compliance.*

A Firm shall not offer to perform or perform land surveying services for the public unless registered with the Board pursuant to the requirements of §661.55 of this title (relating to Registration of Land Surveying Firms).

(1) A Firm shall not offer land surveying services to the public unless the offer of services contains the Certificate of Registration firm number.

(2) A Firm shall designate a surveyor of record who is on site for the primary and for each branch office. The surveyor of record must be an active license holder who is employed full-time by the Firm and who is on site at the Firm's office, and shall perform or directly supervise all survey work and activities that require a license. The surveyor of record shall not be designated as the surveyor of record for more than one primary or branch office.

(3) An active license holder who is a sole practitioner shall satisfy the requirement of the regular, full-time employee.

(4) No surveying services are to be offered to or performed for the public in Texas by a Firm while that Firm does not have a current Certificate of Registration.

(5) A firm that offers or is engaged in the practice of surveying in Texas and is not registered with the Board or has previously been registered with the Board and whose registration has expired shall be considered to be in violation of the Act and Board rules and will be subject to administrative penalties as set forth in §1071.451 and §1071.452 of the Act and §661.99 of this title (relating to Sanctions and Penalty Schedule).

(6) The Board may revoke a certificate of registration that was obtained in violation of the Act and/or Board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional surveyor for the Firm.

(7) If a Firm has notified the Board that it is no longer offering service to the public or performing surveying services for the public, including the absence of a regular, full-time employee who is an active professional surveyor licensed in Texas, the Certificate of Registration will expire.

(8) In addition to any other penalty provided in this section, the Board shall have the power to fine, refuse to issue or renew and/or revoke the registration of a firm where one or more of its officers, directors, partners, members, or managers have been found guilty of any conduct which would constitute a violation of the Board's Act or Rules.

(9) A Firm shall cooperate in Board investigations concerning complaints against a current or former Registered Professional Land Surveyor or Licensed State Land Surveyor employed by the Firm, by making all files and other pertinent records available to the surveyor so that he or she may respond to the complaint.

(10) Any firm furnishing contract land surveying crews must have a RPLS as a full-time employee in that firm and as reflected in its registration form filed with the Board. A full-time employee is an individual employed by a company in an ongoing position with a minimum of 35 scheduled work hours per week, 52 weeks per year.

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 January 25, 2016.

TRD-201600323

Tony Estrada

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-5263

◆ ◆ ◆  
**SUBCHAPTER E. CONTESTED CASES**

**22 TAC §661.99**

The Texas Board of Professional Land Surveying (Board) proposes amendments to §661.99, concerning Sanctions and Penalty Matrix.

The proposed amendment to §661.99 adds a penalty matrix and reflects language adopted after the major rule revision in August 2013.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended section.

Mr. Estrada has determined that for each year of the first five-year period the rule is in effect there will be no local employment impact as a result of adoption of the proposed rule.

Mr. Estrada has determined that for each of the first five years the rule is in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rule. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

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

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at [natalie.jackson@txls.texas.gov](mailto:natalie.jackson@txls.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

*§661.99. Sanctions and Penalty Matrix [Schedule].*

The Board, the Executive Director, Investigator, Administrative Law Judge, or the participants in an Informal Settlement Conference may arrive at a greater or lesser sanction and penalty than suggested in this Rule. The minimum administrative penalty is \$100 per violation. The maximum administrative penalty shall be \$1500 per violation. [has promulgated Rules which are of such importance to insure that all land surveying services are conducted in the best interest of the public and all those who rely on those services; any violation of any rule will cause the Executive Director to issue a reprimand and a \$1,500 penalty for each violation. The Executive Director, after an Informal Settlement Conference, may arrive at a lesser sanction and penalty than suggested in this Rule and may also require additional educational courses.] In addition to the sanctions and penalties noted below [assessed by the Executive Director], the Board may order restitution, suspension, probation and/or additional educational courses. Allegations and disciplinary actions will be set forth in the final Board Order and the severity of the disciplinary action will be based on the following factors:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts;
- (2) the economic damage to property caused by the violation;

- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require. Suggested

Sanctions:  
Figure: 22 TAC §661.99(6)

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 January 25, 2016.

TRD-201600324  
Tony Estrada  
Executive Director  
Texas Board of Professional Land Surveying  
Earliest possible date of adoption: March 6, 2016  
For further information, please call: (512) 239-5263



## CHAPTER 663. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND RULES OF CONDUCT

The Texas Board of Professional Land Surveying (Board) proposes repealing §663.14, concerning Criminal Convictions, proposes replacing §663.14 with new §663.11, and also proposes amending §663.19, concerning Survey Drawing/Written/Description/Report.

The purpose of repealing §663.14 and replacing it with §663.11 is to renumber the section. Section 663.14 currently falls under the subchapter labeled Professional and Technical Standards. Criminal Convictions are not a standard and so the rule should be moved outside that subchapter.

The proposed amendment to §663.19, Survey Drawing/Written/Description/Report, would remove the "/", a typographical error, from between "Written" and "Description". The proposed amendment to paragraph §663.19(e) would require the land surveyor to not only describe the monuments found or placed but to also describe how the monument is traceable to the responsible registrant or employer.

Marcelino A. Estrada, Executive Director, has determined that for the first five-year period the proposed rules are in effect there will be no additional cost to state or local governments as a result of enforcing or administering the proposed sections.

Mr. Estrada has determined that for each year of the first five-year period the rules are in effect there will be no local employment impact as a result of adoption of the proposed rules.

Mr. Estrada has determined that for each of the first five years the rules are in effect, the anticipated public benefit will be that the Board's Rules will be more consistent and precise. Mr. Estrada has determined that there will be no economic cost to individuals required to be subject to the rules. Mr. Estrada has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

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

The Board invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Natalie Jackson, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, Texas 78753, by facsimile (FAX) to (512) 239-5253, or by email at [natalie.jackson@txls.texas.gov](mailto:natalie.jackson@txls.texas.gov). Comments will be accepted for 30 days following publication in the *Texas Register*.

## SUBCHAPTER A. GENERAL PRACTICE STANDARDS

### 22 TAC §663.11

New §663.11 is proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

#### §663.11. Criminal Convictions.

(a) Pursuant to Title 2, Occupations Code, Chapter 53, the following apply for registered professional land surveyors and applicants.

(1) The registrant shall notify the Board in writing within 90 days of any conviction of any crime under the laws of the "United States, or any state, territory or country thereof, which is a felony or a misdemeanor, whether related to the practice of surveying or not.

(2) The applicant will be required to state on a form provided by the board, whether he or she has ever been convicted of a felony or a misdemeanor.

(3) Registrants or applicants are required to provide a summary of the conviction in sufficient detail to allow the Board to determine if it is applicable to the practice of professional land surveying or application for registration.

(4) If the Board determines the conviction is applicable, the Board staff will obtain sufficient details of the conviction to allow the Board to determine the effect of the conviction on the registrant's practice of surveying or the applicant's eligibility for registration.

(b) In determining whether a criminal conviction is applicable to a registrant's surveying practice or an applicant's application, the Board will consider the following:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for practicing surveying;

(3) the extent to which a registrant might offer an opportunity to engage in further criminal activity of the same type as that which the individual had been previously involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a professional land surveyor.

(c) In addition to the factors that may be considered under subsection (b) of this section, the Board shall consider the following:

(1) extent and nature of the individual's past criminal activity;

(2) the age of the individual at the time the crime was committed, and the amount of time that has elapsed since the last criminal activity;

(3) the conduct and work activity of the individual prior to the following the criminal activity;

(4) evidence of rehabilitation; and

(5) other evidence of fitness to practice as a professional land surveyor.

(d) Crimes relating to the practice of surveying include, but are not limited to the following:

(1) criminal negligence in the practice of surveying;

(2) soliciting, offering, giving or receiving any form of bribe in the practice of surveying;

(3) the unauthorized use of property, funds or proprietary information belonging to another in the practice of surveying;

(4) acts relating to the acquisition, use or dissemination of confidential information related to surveying; and

(5) any violation as an individual or as a consenting party of any provision of the Professional Land Surveying Practices Act (Title 6, Occupations Code, Subtitle C).

(e) The application of any applicant deemed ineligible for registration because of a prior criminal conviction will be proposed for rejection and the applicant will be provided the following information in writing:

(1) the reason for rejecting the application;

(2) notice of the administrative procedure used to conduct an informal conference and contested case hearing to show compliance with all requirements of the law for registration as a professional surveyor; and

(3) notice that upon exhausting of the administrative appeal, an action may be filed in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision is final.

(f) The Board shall revoke the certificate of registration of any registrant incarcerated or jailed as a result of conviction for a felony. The certificate of registration of any registrant shall also be revoked for felony probation revocation, revocation of parole, or revocation of mandatory supervision regardless of the date of the original conviction.

(g) The Board may revoke the certificate of registration of any registrant convicted of a misdemeanor or a felony if the crime directly relates to the duties and responsibilities as a professional surveyor.

(1) Any registrant whose certificate of registration has been revoked under the provisions of this subsection will be advised in writing of the right to apply for registration. The application criteria are established in subsections (b) and (c) of this section.

(2) Any registrant whose certificate of registration has been revoked under the provisions of this subsection and who has exhausted administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the Board and its decision. The person must begin the judicial review by filing a petition with the court within 30 days after the Board's decision or the decision is not subject to appeal.

(h) A person is convicted when an adjudication of guilt on an offense is entered against that person by a court of competent jurisdiction whether or not:

(1) the sentence is subsequently probated and the person is discharged from probation or community supervision; or

(2) the accusation, complaint, information or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense.

(i) Imposition of deferred adjudication community supervision is not a conviction.

(j) Persons enrolled or planning to enroll in an educational program in preparation for applying to become a Registered Professional Land Surveyor may request a history evaluation to determine their eligibility for registration. It is the responsibility of the petitioner to obtain and send to the Board for each criminal offense in his or her criminal history (the entire court record), including final court orders noting sentencing information, conditions of probation, revocation of or release from probation, and any other information relating to the petitioner's criminal history, or requested by the Board, along with any recommendations of the prosecution, and/or law enforcement and/or correctional authorities regarding the offense(s). The petitioner shall also furnish documentation acceptable to the Board of prior/current employment status, evidence of court-ordered and/or voluntary rehabilitation, evidence of good conduct in their community, and evidence of payment of all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which they have been convicted, placed on deferred adjudication, community supervision and/or deferred disposition. The petitioner shall submit a fee of \$50 for the purpose of responding to the request.

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

Filed with the Office of the Secretary of State on January 27, 2016.

TRD-201600352  
Tony Estrada  
Executive Director  
Texas Board of Professional Land Surveying  
Earliest possible date of adoption: March 6, 2016  
For further information, please call: (512) 239-5263



## SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

### 22 TAC §663.14

The repeal of §663.14 is proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

*§663.14. Criminal Convictions.*

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 January 26, 2016.

TRD-201600342  
Tony Estrada  
Executive Director  
Texas Board of Professional Land Surveying  
Earliest possible date of adoption: March 6, 2016  
For further information, please call: (512) 239-5263



### 22 TAC §663.19

Amended §663.19 is proposed under Texas Occupations Code §§1071.101, 1071.151, and 1071.452.

No other sections are affected by the proposal.

*§663.19. Survey Drawing/Written [ / ] Description/Report.*

(a) All reports shall delineate the relationship between record monuments and the location of the boundaries surveyed; such relationship shall be shown on the survey drawing, if a drawing is prepared, and/or separate report and recited in the description with the appropriate record references recited thereon and therein.

(b) Every description prepared for the purpose of defining boundaries shall provide a definite and unambiguous identification of the location of such boundaries and shall describe all monuments found or placed.

(c) Courses shall be referenced by notation upon the survey drawing to an identifiable and monumented line or an established geodetic system for directional control.

(d) The survey drawing shall bear the Firm name and Firm Registration Number, the land surveyor's name, address, and phone number who is responsible for the land survey, his/her official seal, his/her original signature (see §661.46 of this title (relating to Seal and Oath), and date surveyed.

(e) Boundary monuments found or placed by the land surveyor shall be described upon the survey drawing including how it is marked in a way that is traceable to the responsible registrant or associated employer. The land surveyor shall note upon the survey drawing, which monuments were found, which monuments were placed as a result of his/her survey, and other monuments of record dignity relied upon to establish the corners of the property surveyed.

(f) A reference shall be cited on the drawing and prepared description to the record instrument that defines the location of adjoining boundaries.

(g) If any report consists of more than one part, each part shall note the existence of the other part or parts.

(h) If a land surveyor provides a written narrative in lieu of a drawing/sketch to report the results of a survey, the written narrative shall contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of the Board.

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600325



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

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

##### DIVISION 10. ELIGIBILITY AND FORMS

###### 28 TAC §5.4906, §5.4907

The Texas Department of Insurance proposes the repeal of 28 TAC §5.4906 and §5.4907, which concern the certificate of compliance approval program and the certificate of compliance transition program for the Texas Windstorm Insurance Association (association), respectively. Subsequent legislation has rendered these sections obsolete.

**EXPLANATION.** The association is the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market. Insurance Code §2210.251 requires that structures constructed, altered, remodeled, enlarged, or repaired, or to which additions are made after January 1, 1988, be inspected and approved by TDI for compliance with the association's plan of operation to be eligible for coverage through the association. The commissioner of insurance has adopted various windstorm building codes for the association's plan of operation.

Title 28 TAC §5.4906 and §5.4907 refer to programs through which structures could gain TDI approval without being inspected or complying with the applicable windstorm building code, under certain statutory exceptions. At the time §5.4906 was adopted, Insurance Code §2210.251(f) and §2210.258 provided that a residential structure insured by the association as of September 1, 2009, could continue coverage through the association, provided that any construction, alteration, remodeling, enlargements, repairs, or additions begun on or after June 19, 2009, complied with the applicable windstorm building code. Section 5.4906 applies to residential structures insured by the association under a policy that was issued in accordance with TDI's approval process regulations initiated April 12, 2006, and that continued to be eligible for that coverage on September 1, 2009. The section reminds persons that the declination and flood insurance requirements in the Insurance Code and the association's underwriting requirements apply to structures in the certificate of compliance approval program.

Section 5.4907 was also adopted under the authority of Insurance Code §2210.251 and §2210.258. Section 5.4907 describes the certificate of compliance transition program, which provided that between September 1, 2009, and August

31, 2011, residential structures could obtain coverage through the association without complying with the applicable windstorm building code. Under the program, the association could provide coverage to noncompliant residential structures for which private market windstorm and hail insurance coverage had been discontinued within the 12 months before the date of the application to the association; that had not been constructed, altered, remodeled, enlarged, repaired, or added to since June 19, 2009; and that met other requirements.

HB 3, 82nd Legislature, First Called Session (2011) and SB 1702, 83rd Legislature, Regular Session (2013) rendered §5.4906 and §5.4907 obsolete. HB 3 established the alternative certification program, which made noncompliant residential structures eligible for association coverage provided that at least one qualifying structural building component had been inspected and found to comply with applicable building code standards. SB 1702 repealed the alternative certification program but enabled noncompliant residential structures insured in the private market on or after June 19, 2009, to obtain insurance through the association, even if they had been constructed, altered, remodeled, enlarged, repaired, or added to on or after that date. The provisions of SB 1702 were to expire on December 31, 2015, but SB 498, 84th Legislature, Regular Session (2015) extended the provisions indefinitely.

In the absence of §5.4906 and §5.4907, noncompliant residential structures that became eligible for association coverage under former versions of Insurance Code §2210.251(f) and §2210.258 are still eligible. Policyholders will continue to pay a premium surcharge of 15 percent for each noncompliant residential structure under Insurance Code §2210.259(a). Currently, 36,990 structures in Texas are in this category.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Sam Nelson, director, Inspections Office, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state or local government. If adopted, the proposal would impose no additional requirements that affect state or local government. This proposal repeals sections that were made obsolete by HB 3, 82nd Legislature, First Called Session (2011) and SB 1702, 83rd Legislature, Regular Session (2013).

**PUBLIC BENEFIT AND COST NOTE.** Mr. Nelson has also determined that for each year of the first five years the proposed repeal will be in effect, there will be public benefits resulting from the proposal and there will be no costs to persons required to comply with the proposal. The public benefit of the proposed repeal will be that it will update TDI rules to be consistent with existing law on exceptions to the windstorm building code compliance requirements. This should reduce potential confusion on the part of agents and policyholders.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** Government Code §2006.002(c) and (f) require that if a proposed rule may have an economic impact on small or micro businesses, 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 a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 mil-

lion in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees.

This proposal does not have any economic impact on small or micro businesses, so no economic impact statement or regulatory flexibility analysis is required.

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

**REQUEST FOR PUBLIC COMMENT.** If you wish to comment on this proposal you must do so in writing no later than 5:00 p.m., Central Time on March 7, 2016. Send one copy either by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov). You must simultaneously submit an additional copy of the comments by mail to Sam Nelson, Director, Inspections Office, Mail Code 105-5G, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [Sam.Nelson@tdi.texas.gov](mailto:Sam.Nelson@tdi.texas.gov). If you wish to request a public hearing on this proposed repeal, you must submit a request separately by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov) before the close of the public comment period. If TDI holds a hearing, the commissioner will consider written comments and testimony presented at the hearing.

**STATUTORY AUTHORITY.** TDI proposes the repeal of 28 TAC §5.4906 and §5.4907. The repeals are proposed under Insurance Code §36.001 and §2210.008.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

**CROSS REFERENCE TO STATUTE.** The proposal affects the following statutes: Insurance Code §§2210.251, 2210.258, and 2210.259

*§5.4906. Certificate of Compliance Approval Program.*

*§5.4907. Certificate of Compliance Transition Program.*

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

Filed with the Office of the Secretary of State on January 20, 2016.

TRD-201600217

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

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



## CHAPTER 21. TRADE PRACTICES SUBCHAPTER V. PHARMACY BENEFITS

The Texas Department of Insurance proposes amendments to 28 TAC Chapter 21, Subchapter V, relating to Pharmacy Benefits. Specifically, TDI proposes amending §§21.3001 - 21.3004, 21.3010, 21.3011, 21.3020, 21.3022, and 21.3023; repealing §21.3005 and §21.3021; and adding new §§21.3030 - 21.3034.

The proposed amendments to §§21.3001 - 21.3004, 21.3010, 21.3011, 21.3020, 21.3022, and 21.3023 are necessary to make nonsubstantive changes to the rule text for consistency with current TDI rule-drafting style; correct typographical, grammatical, and punctuation errors; simplify and clarify certain provisions; update Insurance Code citations; and conform TDI rules to current law.

The proposed amendment to §21.3002(7) is necessary to conform to Insurance Code §1369.151, which states the subchapter is applicable to state employees, Medicaid, and Child Health Insurance Program (CHIP) plans. The proposed amendment to §21.3003 is necessary to conform to Insurance Code §1369.153, which designates what content must be located on the front and back of an identification card. The proposed amendment to §21.3020(7) is necessary to conform to Insurance Code §1369.052 and §1369.053, which state that the subchapter is applicable to individual, small group, and large group health benefit plans, but is not applicable to CHIP and Medicaid Managed Care Organizations, respectively. The amendment to §21.3022 is necessary to conform to Insurance Code §1369.0541, which specifies conditions under which modifications of drug coverage may occur and adds notice requirements.

The proposed repeal of §21.3005 is necessary because it applies to identification cards that were in effect on September 1, 1999, and is no longer applicable.

The proposed repeal of §21.3021 is intended to streamline the rules implementing Insurance Code Chapter 1369, Subchapter B. The requirements contained in §21.3021 are proposed to be included in §21.3030(a) in implementing Insurance Code §1369.054.

Proposed new §§21.3030 - 21.3034 are necessary to implement the portions of HB 1624, 84th Legislature, Regular Session (2015) (HB 1624) that added Insurance Code §§1369.0542 - 1369.0544, which require health benefit plan issuers to post on their website formulary information for each health benefit plan they issue.

**EXPLANATION.** HB 1624 relates to the transparency of certain information related to health benefit plan coverage. During the legislative session, interested parties asserted that health benefit plan issuers do not post complete or easily accessible prescription drug formularies online. The parties noted that there is often no information available to health insurance shoppers about cost-sharing for prescription drugs under the plans until after they purchase a plan.

HB 1624 requires a health benefit plan issuer to display formulary information on a public website maintained by the issuer as required by the commissioner of insurance by rule. The bill requires a direct electronic link to the formulary information to be displayed in a conspicuous manner in the electronic summary of benefits and coverage portion of each plan issued by a health benefit plan issuer on the issuer's website, and it requires the information to be publicly accessible to enrollees, prospective

enrollees, and others without necessity of providing a password, user name, or personally identifiable information. The bill also requires a health benefit plan issuer to make plan-specific formulary information available, including disclosures relating to the cost-sharing amount for each drug, prior authorization requirements, a description of how the drug will be included or excluded from the deductible, and an explanation of coverage of each formulary drug.

HB 1624 requires the commissioner to develop and adopt by rule requirements to promote consistency and clarity in the disclosure of formularies to facilitate comparison shopping among health benefit plans. Proposed new §§21.3030 - 21.3034 implement this requirement. For example, §21.3033 requires a health benefit plan issuer to create a "Summary of Formulary Benefits" designed to help consumers understand the prescription drug benefits offered under the specific plan they are reviewing so they can compare the benefits to those offered by other plans. The information is intended to help consumers compare both the value and scope of the formulary benefits.

TDI posted an informal draft of the rule text on its website on October 2, 2015, and invited public comment. TDI hosted a stakeholder meeting on October 20, 2015, and invited further public comment. TDI accepted and considered all comments received, revised the draft, and makes this proposal.

HB 1624 added Insurance Code §§1369.0542 - 1369.0544, relating to formulary disclosures, and Insurance Code §§1451.501 - 1451.505, relating to health care provider directories. This proposal addresses only the Insurance Code sections relating to formulary disclosures, as new or amended sections are not necessary to implement the Insurance Code sections relating to health care provider directories.

*Proposed Amendments.* Amendments to Subchapter V divide the subchapter into four new divisions for ease of reference and organizational purposes. New Division 1, titled "General Provisions," encompasses existing §21.3001 and relates to applicability and severability. New Division 2, titled "Identification Cards," encompasses existing §§21.3002 - 21.3004 and relates to pharmacy cards and standard identification cards. Division 2 will not include §21.3005, as that section is proposed for repeal. New Division 3, titled "Off-Label Drugs," encompasses existing §§21.3010 - 21.3011 and relates to coverage of off-label drugs. New Division 4, titled "Prescription Drug Formulary Coverage and Disclosure Requirements," encompasses existing §§21.3020 - 21.3023 related to continuation of benefits and adverse determination of nonformulary prescription drugs, and newly proposed §§21.3030 - 21.3034 related to required drug formulary disclosures. Provisions contained in repealed §21.3021 are incorporated in §21.3030(a).

Proposed amendments throughout Subchapter V remove the word "group" where it precedes "health benefit plan" to conform with Insurance Code §1369.151. In addition to the substantive amendments and additions, the proposed amendments also contain conforming changes for clarity and agency style, and amendments update Insurance Code citations.

The following explanation provides an overview and description of additional reasoned justification for the proposed amendments to the rules.

§21.3001. *Applicability and Severability.* A proposed amendment to §21.3001 deletes the word "scope" from the title of the section and replaces it with "applicability." Proposed amendments to §21.3001(a)(1) - (3) add language to clarify which

sections in Subchapter V apply to which subchapters of Insurance Code Chapter 1369 and delete text referencing Insurance Code articles that have been recodified.

§21.3002. *Definitions; Pharmacy Identification Cards.* The proposed amendment to §21.3002(1) deletes and replaces current text with new text that defines "administrator" as it is defined in Insurance Code §4151.001(1).

The proposed amendment to §21.3002(7) replaces current text with new text that defines "health benefit plan" as it is described in Insurance Code §1369.151, and includes a health benefit plan providing coverage for pharmacy benefits. The amendment also adds the phrase "exempt from state regulation under" to part of the definition, so that part of the definition now reads, "This definition includes the term, 'plan,' as defined in Insurance Code §4151.001(4), but does not include a self-funded employee welfare benefit plan exempt from state regulation under ERISA, 29 U.S.C. §1002(1)(A)."

The proposed amendment to §21.3002(9) replaces current text with new text that defines "issuer" as those entities described in Insurance Code §1369.151, but not those excluded by Insurance Code §1369.152.

The proposed amendment to §21.3002(10) adds new text "exempt from state regulation under" to clarify the definition of "pharmacy benefit manager." The definition now reads, "As defined in Insurance Code §4151.151, but does not include a pharmacy benefit manager for a self-funded employee welfare benefit plan exempt from state regulation under ERISA, 29 U.S.C. §1002(1)(A)."

§21.3003. *Standard Identification Cards.* The proposed amendment to §21.3003(b) adds the requirement that the information listed in §21.3003(b)(1) - (7) be included on the front of each identification card. The proposed amendment to §21.3003(b)(2) incorporates language from current §21.3003(b)(3) and provides an option to include either the name or logo of the issuer, the administrator, or the pharmacy benefit manager on the front of the card.

Current §21.3003(b)(4) is redesignated §21.3003(b)(3) and current §21.3003(b)(5) is redesignated §21.3003(b)(4). The proposed amendment to current §21.3003(b)(6) moves the text to proposed new §21.3003(c) and redesignates current §21.3003(b)(7) as §21.3003(b)(5), and current §21.3003(b)(8) as §21.3003(b)(6). The proposed amendments to new §21.3003(7) add the requirement that for a plan issued under Insurance Code Chapters 843 or 1301, the letters "TDI" or "DOI" be prominently displayed on the front of each identification card.

Proposed new §21.3003(c) requires the issuer of a health benefit plan to include the information described in current §21.3003(b)(6) on the identification card of each enrollee, but does not specify which side of the card. Current §21.3003(c) is redesignated §21.3003(d).

§21.3004. *Issuance of Standard Identification Cards.* Proposed amendments to §21.3004(c) - (d) remove references to §21.3005, as this proposal repeals §21.3005 in its entirety.

§21.3005. *Previously Issued Identification Cards.* The proposal repeals §21.3005, as both subsections relate to updating information on enrollee identification cards in effect on September 1, 1999, and therefore, are no longer relevant.

§21.3010. Definitions; Coverage of Off-Label Drugs. Proposed amendments to §21.3010 make changes for clarity and agency style and update Insurance Code citations.

§21.3011. Minimum Standards of Coverage for Off-Label Drug Use. Proposed amendments to §21.3011 make changes for clarity and agency style and update Insurance Code citations.

§21.3020. Definitions; Prescription Drug Formulary. Proposed amendments to §21.3020 make changes for clarity and agency style, update Insurance Code citations, and remove the word "group" preceding "health benefit plan" to comply with Insurance Code §1369.052. Proposed revisions to this section also add definitions for terms used in proposed new §§21.3030 - 21.3033.

A proposed amendment to §21.3020(1) deletes the current definition for the term "adverse determination" and replaces it with a reference to the definition for the term as defined in Insurance Code §4201.002.

Proposed new §21.3020(2) adds the term "allowed amount" and defines it as "the amount the health benefit plan issuer allows as reimbursement for a health care service, supply, or prescription drug, including reimbursement amounts for which a patient is responsible due to deductibles, copayments, or coinsurance." Current §21.3020(2) is redesignated §21.3020(4).

Proposed new §21.3020(3) adds the term "commonly prescribed drug list" and defines it as "a list of the 150 most frequently prescribed drugs published annually by the New York State Board of Pharmacy, available at <https://apps.health.ny.gov/pdpw/Drug-Info/DrugInfo.action>." Current §21.3020(3) is redesignated §21.3020(5).

A proposed amendment to current §21.3020(4) redesignates it §21.3020(6) and amends the definition of "delegated entity" to clarify that third-party administrators are those defined in Insurance Code §4151.001(1) and pharmacy benefits are those defined in Insurance Code §4151.151.

A proposed amendment to current §21.3020(5) redesignates it §21.3020(9) and amends the defined term to include the words "or formulary."

A proposed amendment to current §21.3020(6) redesignates it §21.3020(10).

Proposed new §21.3020(7) adds the term "direct electronic link" and defines it as "a hyperlink that, when clicked, delivers a user directly to the applicable website destination." Proposed amendments to current §21.3020(7) redesignate it §21.3020(11), remove the word "group" from the defined term, and define it as an insurance policy or evidence of coverage as described in Insurance Code §1369.052, but not those described in Insurance Code §1369.053, that provides coverage for a discrete package of benefits, paired with specific cost-sharing parameters.

Proposed new §21.3020(8) adds the term "drug" and defines it by referencing the definition for the term in the Texas Pharmacy Act, Occupations Code §551.003. A proposed amendment to current §21.3020(8) redesignates it §21.3020(12).

Proposed amendments to current §21.3020(9) - (13) redesignate them §21.3020(15) - (18).

Proposed new §21.3020(14) adds the term "off-label drug use" and defines it as "the use of a drug that is approved by the Food and Drug Administration for the treatment of one medical condition, but is used to treat another medical condition or at different

dosage forms, dosage regimens, populations, or other parameters not mentioned in the approved labeling."

Proposed new §21.3020(19) adds the term "summary health plan document" and defines it as "a document summarizing the coverage provided under a health benefit plan, including a summary of benefits and coverage, as required under 42 U.S. Code §300gg-15 and 45 CFR §147.200; and a disclosure of terms and conditions of a policy, as required under §3.3705(b) of this title (relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations), or an evidence of coverage, as required under §11.1600(b) of this title (relating to Information to Prospective and Current Contract Holders and Enrollees)."

§21.3021. Required Disclosure of Drug Formulary. The proposal repeals §21.3021 in order to group all the formulary disclosure requirements in §§21.3030 - 21.3033. The requirements under §21.3021 are included under §21.3030(a) and Insurance Code §1369.054.

§21.3022. Continuation of Benefits. Proposed amendments to §21.3022 remove the word "group" preceding "health benefit plan" to comply with Insurance Code §1369.052.

The proposed amendments also add new text to specify conditions under which health benefit plans may make modifications to drug coverage under Insurance Code §1369.0541. Specifically, the proposed amendment to §21.3022(a) clarifies that modifications to drug coverage are not permitted until the plan's renewal date. The proposed amendment to §21.3022(b) replaces existing text with new text describing the conditions under which a health benefit plan issuer may make modifications to drug coverage. The proposed amendment to §21.3022(c) replaces existing text with new text describing some modifications of drug coverage for the purposes of the section.

§21.3023. Nonformulary Prescription Drugs; Adverse Determination. Proposed amendments to §21.3023 correct typographical, grammatical, and punctuation errors; make changes to conform rule text to current TDI drafting style; update Insurance Code citations; and remove the word "group" preceding "health benefit plan" to comply with Insurance Code §1369.052.

§21.3030. Availability of Formulary Information. Proposed new §21.3030(a) incorporates provisions from repealed §21.3021 and requires an issuer of a health benefit plan or its delegated entity to include plain language disclosures related to formularies in the coverage documentation provided to enrollees, which is consistent with Insurance Code §1369.054. Proposed new §21.3030(b) requires an issuer of a health benefit plan to make a paper copy of the formulary information, which is required under proposed new §21.3032 and §21.3033, available to a current or prospective enrollee on request. Proposed new §21.3030(c) permits a health benefit plan issuer to exclude the plan-level cost-sharing information on the paper copy as long as the enrollee can obtain the information by calling a toll-free number. Proposed new §21.3030(d) requires the paper copy to use at least 10-point font.

§21.3031. Formulary Information on Issuer's Website. Proposed new §21.3031 describes how the issuer of a health benefit plan displays the formulary information required under new proposed §21.3032 and §21.3033.

Proposed new §21.3031(a) requires a health benefit plan issuer to display the formulary information on a website that is publicly accessible without requiring the use of paid software, a pass-

word, user name, or personally identifiable information. Proposed new §21.3031(a)(1) - (2) state that formulary information must be electronically searchable by drug name and use at least 10-point font.

Proposed new §21.3031(b) requires that each health plan document include a direct link to the website containing the formulary information and describes the direct-link requirements.

Proposed new §21.3031(c) permits an issuer of a health benefit plan to develop a web-based tool to display plan-specific cost-sharing information required under §21.3032(c). Proposed new §21.3032(c)(1) - (4) describe the required elements that the web-based tool must contain. Section 21.3031(c)(1) requires the web-based tool to be publicly accessible to enrollees, prospective enrollees, and others without the use of a password or user name. Section 21.3031(c)(2) requires the tool to allow consumers to electronically search formulary information by the name under which the health benefit plan is marketed. Section 21.3031(c)(3) requires the tool to contain plan-specific cost-sharing information for each drug. Section 21.3031(c)(3)(A) - (C) describe the plan-specific cost-sharing information the health benefit plan issuer must include. Section 21.3031(c)(4) requires that the tool include a direct electronic link to a chart displaying each formulary that applies to each health benefit plan issued by the health benefit plan issuer and include a direct electronic link to the Summary of Benefits and Coverage and formulary document for each health plan listed. This chart may be limited to health benefit plans being sold in the market in which the applicable health benefit plan is issued.

§21.3032. Formulary Disclosure Requirements. Proposed new §21.3032(a) requires the information provided under the section to include each prescription drug dispensed in a pharmacy or administered by a physician, and must differentiate between drugs covered under the plan's pharmacy benefits and medical benefits. Proposed new §21.3032(b)(1) - (4) describe the coverage information that must be included for each drug.

Proposed new §21.3032(c) requires the formulary information to include plan-specific cost-sharing information for each drug. Proposed new §21.3032(c)(1) requires the formulary information to indicate whether the drug is subject to a pharmacy or medical deductible and the amount of the deductible. Proposed new §21.3032(c)(2) requires the formulary information to include the cost-sharing amount for each drug under the pharmacy or medical benefit in a retail, mail order, or physician-administered setting, if applicable, after the enrollee has met any deductible requirement. Proposed new §21.3032(c)(2)(A) - (B) describe the cost-sharing information that must be included.

Proposed new §21.3032(d) requires the cost-sharing amounts to reflect the cost to the consumer for a month-long supply of the prescribed drug, unless otherwise noted, and it describes the requirements for calculating the cost-sharing amount for the drug.

Proposed new §21.3032(e) requires a legend on each page of the formulary information, and it describes required elements of the legend.

§21.3033. Facilitating Comparison Shopping. Proposed new §21.3033(a) requires that the formulary information must include a summary titled "Summary of Formulary Benefits." The summary is designed to help current and prospective enrollees understand the prescription drug benefits offered under the plan and to compare the benefits in one plan to those offered by other plans. Proposed new §21.3033(a)(1) - (5) describe the title of

each section of the summary, the elements the summary must include, and the order in which to include them.

Proposed new §21.3033(a)(1) requires a section in the summary titled "How to Find Information on the Cost of Prescription Drugs," which explains how a consumer can determine cost-sharing from the plan's summary health plan document, formulary information, and web-based tool, if applicable.

Proposed new §21.3033(a)(2) requires a section in the summary titled "Formulary by Health Benefit Plan," which includes a chart displaying each formulary that applies to each health benefit plan issued by the issuer and a direct electronic link to the Summary of Benefits and Coverage and formulary document for each health plan listed. This chart may be limited to health benefit plans being sold in the market in which the health benefit plan is issued.

Proposed new §21.3033(a)(3) requires a section in the summary titled "Drugs by Cost-Sharing Tier," which includes information on drugs by cost-sharing tier, if applicable. Proposed new §21.3033(a)(3)(A) - (B) describe the cost-sharing tier information an issuer must include.

Proposed new §21.3033(a)(4) requires a section titled "Coverage for Commonly Prescribed Drugs," which includes information on coverage for commonly prescribed drugs. Proposed new §21.3033(a)(4)(A)(i) - (ii) describe the information to include if drugs from the commonly prescribed drug list are included in the formulary. Proposed new §21.3033(a)(4)(B) describes the information to include if drugs from the commonly prescribed drug list are not included in the formulary.

Proposed new §21.3033(a)(5) requires a section in the summary titled "How Prescription Drugs are Covered under the Plan," which includes information on how prescription drugs are covered under the plan. Proposed new §21.3033(a)(5)(A) - (F) describe the information an issuer must include in the summary.

Proposed new §21.3033(a)(5)(A) requires a section in the summary titled "Formulary Composition," which explains the method the health benefit plan issuer uses to determine the prescription drugs to include or exclude from the formulary, whether the formulary is open or closed, and a statement on how often the issuer reviews the formulary.

Proposed new §21.3033(a)(5)(B) requires a section in the summary titled "Right to Appeal," which explains an enrollee's right to appeal a denial of a medically necessary drug that is not covered under the formulary.

Proposed new §21.3033(a)(5)(C) requires a section in the summary titled "Continuation of Coverage," which explains the consumer's right to continued coverage consistent with proposed amended §21.3022 and Insurance Code §1369.055 and §1369.0541.

Proposed new §21.3033(a)(5)(D) requires a section in the summary titled "Off-Label Drug Use," which explains coverage for off-label drug use.

Proposed new §21.3033(a)(5)(E) requires a section in the summary titled "Cost-Sharing," which explains how cost-sharing is determined under the plan, including: information on deductibles; formulary tiers or cost-sharing levels if the formulary is multitier; the difference between preferred and nonpreferred drugs, if applicable; differences in coverage for in-network and out-of-network pharmacies; and the difference in coverage between retail pharmacy and mail-order pharmacy, if applicable.

Proposed new §21.3033(a)(5)(F) requires a section in the summary titled "Medical Management Requirements," which explains each type of medical management requirement used by the health benefit plan, including prior authorization, step therapy, or other protocol requirements that limit access to prescription drugs, as applicable.

Proposed new §21.3033(b) requires the summary information under proposed new subsection (a) to be located on the first page of the formulary document under the title "Summary of Formulary Benefits."

§21.3034. Effective Date. Proposed new §21.3034 states the effective dates of proposed new §§21.3030 - 21.3033. Proposed new §21.3034(a) provides the effective date for plans being marketed in the individual market, and proposed new §21.3034(b) provides the effective date for plans being marketed in the group market.

FISCAL NOTE. Rachel Bowden, program specialist, Regulatory Initiatives Office, has determined that, for each year of the first five years the proposed amendments, repeals and new rules are in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Bowden has determined that for each year of the first five years the proposed amendments, repeals and new rules are in effect, there are public benefits anticipated as a result of the administration and enforcement of the rules, and there will also be potential costs for persons required to comply with the proposal. TDI drafted the proposed rules to maximize public benefits consistent with the authorizing statutes while mitigating costs.

#### *Anticipated Public Benefits.*

The anticipated public benefits are the implementation of rules necessary to comply with HB 1624 and increased transparency of formulary information for consumers so they can easily compare and shop among plans. Health benefit plan issuers will publish formulary information that is plan specific, discloses cost-sharing information, and contains a summary of formulary benefits.

#### *Anticipated Costs.*

Proposed new §21.3030, Availability of Formulary Information. There are compliance costs associated with proposed §21.3030. The probable cost components for compliance include the cost of printing, copying, and mailing formularies on request to prospective or current enrollees. TDI estimates the average price of a standard business-size envelope is between \$.07 and \$.17, and a business catalog-size envelope is between \$.31 and \$.40. TDI further estimates that the cost of printing or copying is between \$.08 and \$.12 per page. According to the United States Postal Service, the price to mail a domestic first class letter (one ounce) is \$.49. The price of each additional ounce is \$.21. It is not feasible for TDI to estimate the total increased printing, copying, and mailing costs attributable to compliance with the proposed section because it is unknown at this time how many prospective or current enrollees will request a paper copy of the formulary information, or how many formularies prospective or current enrollees will request.

Proposed new §21.3031, Formulary Information on Issuer Website and §21.3032, Formulary Disclosure Requirements.

The compliance costs associated with the proposed rules in §21.3031 and §21.3032 are largely statutory, and these sections of the rules will not increase the cost of compliance with Insurance Code §§1369.0542 - 1369.0544 beyond those required by statute. The statutory costs include development of a web page to house the required formulary information, a direct link to the web page from the issuer's health plan documents, and compilation of the required formulary disclosures. Health benefit plan issuers may also incur costs if they choose to develop a web tool to display the cost-sharing amount for each drug.

Proposed new §21.3033, Facilitating Comparison Shopping. There are also compliance costs associated with proposed §21.3033. The probable cost components associated with compliance include compiling the required information to create a "Summary of Formulary Benefits" document, reviewing the summary, and posting the summary online. TDI has identified four categories of labor reasonably necessary to perform the tasks and estimates a total of 40 to 120 hours combined labor time to complete the tasks. The total cost will vary depending on how many variations of the summary are required, how the hours are dispersed across the labor categories, and by the health benefit plan issuer's existing information systems and staffing.

An issuer may calculate the total cost of labor for each category by multiplying the number of estimated hours for each cost component by the median hourly wage for each category of labor. The four categories of labor and their mean hourly wage described in the latest State Occupational Employment and Wage Estimates for Texas published by the United States Department of Labor (May 2014) at [http://www.bls.gov/oes/current/oes\\_tx.htm](http://www.bls.gov/oes/current/oes_tx.htm) are as follows: general and operations manager, \$59.16; computer programmer, \$38.85; compliance officer, \$33.06; and administrative assistant, \$25.52.

Health benefit plan issuers may incur additional costs for printing, copying, and mailing the summary to prospective and current enrollees on request. These costs are the same as the costs assessed to comply with §21.3032 (relating to Formulary Disclosure Requirements), discussed above.

#### *Stakeholder Feedback on Costs.*

TDI requested cost information by public comment during the posting of the informal draft of the rule text and at the October 20, 2015, stakeholder meeting. TDI received general input that the cost of implementing the statutory requirements proposed in new §§21.3030 - 21.3033 will be costly to implement. TDI is not able to modify the statutory requirements, and the proposed new rules implementing the statutory requirements do not increase the cost of compliance with the statute. In order to mitigate the cost of compliance, TDI proposed a phased-in implementation period in §21.3034.

TDI also received general input regarding the cost of implementing the proposed rule requirements in §21.3030 and §21.3033. Based on this information, TDI proposes §21.3030(c) to permit a paper copy of the formulary information to exclude plan-level cost-sharing information and reduced the number of reporting requirements in §21.3033 to minimize potential costs.

#### **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.**

##### *Economic Impact Statement.*

As required by Government Code §2006.002(c), TDI has determined that the proposed amendments, repeals and new rules

will have an adverse economic effect on small or micro businesses that must comply with the rules. The adverse economic impact will result from the cost components associated with printing and mailing paper copies of the formulary information in §21.3030, and creating and making available a summary of formulary benefits in §21.3033. The cost of compliance with these proposed rules will not vary between large businesses and small or micro businesses, and TDI's cost analysis and resulting estimated costs in the Public Benefit and Cost Note portion of this proposal are equally applicable to large businesses and small or micro businesses.

#### *Regulatory Flexibility Analysis.*

Government Code §2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Government Code §2006.002(c)(1) requires that the analysis consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses.

TDI considered the following three additional regulatory alternatives: (i) not proposing the new rules requirements at §21.3030 or §21.3033; (ii) proposing different requirements for small and micro businesses; and (iii) exempting small and micro businesses. For the following reasons, TDI rejected each of these alternatives as not being sufficiently consistent with the purpose of the statute.

*Not proposing the new rules requirements at §21.3030 or §21.3033.* The primary objective of the proposal is to provide consumers with complete and easily accessible formulary information consistent with HB 1624. The proposed rules promote consistency and clarity in the disclosure of formularies to facilitate consumer comparison shopping among health benefit plans and make the disclosures available to all consumers regardless of Internet access. Not proposing rules would conflict with the intent of the statute.

*Proposing Different Requirements for Small and Micro Businesses.* As previously noted, a purpose of the proposal is to provide consistent formulary disclosures to facilitate comparison shopping for health insurance. The formulary disclosures would not be consistent if small or micro business health benefit plan issuers reported different or less information than large businesses. Proposing different requirements for small or micro businesses would frustrate the intent of the statute.

*Exempting small and micro businesses.* Finally, TDI has determined that exempting small and micro business health benefit plan issuers from the requirements of the proposed rules would also conflict with the intent of the statute and would not improve the ability of patients to make appropriate and cost-effective health care decisions. For example, consumers already enrolled in a health benefit plan issued by a small or micro business issuer would not be able to compare their current formulary with the formularies offered by other small or micro business issuers of health plans in the market. Similarly, prospective consumers would also not be able to comparison shop.

**TAKINGS IMPACT ASSESSMENT.** TDI has determined that no private real property interests are affected by this proposal. This proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action

and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** TDI invites comments on the proposed rules. If you wish to comment on this proposal, your comments must be postmarked no later than 5 p.m., Central time, on March 7, 2016. Please send comments by mail to Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to [chiefclerk@tdi.texas.gov](mailto:chiefclerk@tdi.texas.gov). Please simultaneously submit an additional copy of the comments by mail to Rachel Bowden, Regulatory Initiatives Office, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to [ihlcomments@tdi.texas.gov](mailto:ihlcomments@tdi.texas.gov).

TDI will hold a hearing on the proposed rules from 9:30 a.m. to noon, Central time, on February 24, 2016, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas 78701. TDI will consider all written comments received before the deadline and all written and oral comments on these proposed rules presented at the hearing.

## **DIVISION 1. GENERAL PROVISIONS**

### **28 TAC §21.3001**

**STATUTORY AUTHORITY.** The amendments to §21.3001 are proposed under Insurance Code §§1369.005, 1369.057, 1369.151, 1369.154, and 36.001. Section 1369.005 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter A; §1369.057 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter B; §1369.151 extends the applicability of Insurance Code Chapter 1369, Subchapter D to include state employee, Medicaid, and CHIP plans; §1369.154 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter D; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The proposed amendments to §21.3001 affect the following statutes: Insurance Code §§36.001, 1369.005, 1369.057, 1369.151, and 1369.154.

*§21.3001. Applicability [Scope] and Severability.*

(a) Applicability [Scope]. This subchapter implements the provisions of Insurance Code Chapter 1369 [Articles 21-07-6, Sec. 19A; 21-52J; 21-53L; and 21-53M] as follows:

(1) Division 2 of this subchapter applies to a health benefit plan that is subject to Insurance Code Chapter 1369, Subchapter D [Sections 21-3002 - 21-3005 of this subchapter implement the provisions of Insurance Code Articles 21-07-6, Sec. 19A, and 21-53L], and relates [relate] to pharmacy identification cards.

(2) Division 3 of this subchapter applies to a health benefit plan that is subject to Insurance Code Chapter 1369, Subchapter A [Sections 21-3010 - 21-3014 of this subchapter implement the provisions of Insurance Code Article 21-53M], and relates [relate] to coverage of off-label drugs.

(3) Division 4 of this subchapter applies to a health benefit plan that is subject to Insurance Code Chapter 1369, Subchapter B [Sections 21-3020 - 21-3023 of this subchapter implement the provisions of Insurance Code Article 21-52J], and relates [relate] to the use of a drug formulary by a [group] health benefit plan.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statute

[statutes] of this state, is unconstitutional, or for any other reason is invalid, the remaining provisions [shall] remain in full effect. If a court of competent jurisdiction holds that the application of any provision of this subchapter to particular persons, or in particular circumstances, is inconsistent with any statutes of this state, is unconstitutional, or for any other reason is invalid, the provision remains [shall remain] in full effect as to other persons or circumstances.

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 January 20, 2016.

TRD-201600229

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

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



## DIVISION 2. IDENTIFICATION CARDS

### 28 TAC §§21.3002 - 21.3004

**STATUTORY AUTHORITY.** The amendments to §§21.3002 - 21.3004 are proposed under Insurance Code §§843.209, 1369.052, 1369.151, 1369.153, 1369.154, 1369.154, §1301.162, and 36.001. Section 843.209 requires that HMO identification cards indicate that the HMO is regulated under the Insurance Code; §1369.052 extends the applicability of Subchapter B to individual, small group, and large group health benefit plans; §1369.151 extends the applicability of Insurance Code Chapter 1369, Subchapter D to include state employee, Medicaid, and CHIP plans; §1369.153 designates identification card content that must be located on the front of the card; §1369.154 provides that the commissioner may adopt rules to implement Chapter 1369, Subchapter D; §1301.162 requires that identification cards issued by insurers regulated by the Insurance Code display the first date on which an individual became insured under the plan or a toll-free number a physician or health care provider may use to obtain that date; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The proposed amendments to §§21.3002 - 21.3004, affect the following statutes: Insurance Code Chapters 843 and 1301; and §§36.001, §1301.162, 1369.052, 1369.151, 1369.153, 1369.154, 1451.001(1) and (4), and 4151.151.

#### §21.3002. *Definitions; Pharmacy Identification Cards.*

The following words and terms, when used in this division, [§§21.3002 - 21.3005 of this subchapter shall] have the following meanings, unless the context clearly indicates otherwise:

(1) **Administrator**--As defined in Insurance Code §4151.001(1), for plans subject to Insurance Code Chapter 1369, Subchapter D [Article 21-07-6, §1(1); but does not include an administrator for a self-funded employee welfare benefit plan covered by the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1002(1)(A)].

(2) **Drug**--As defined in the Texas Pharmacy Act, Occupations Code §551.003.

(3) **Drug formulary**--A list of drugs for which a health benefit plan provides coverage, approves payment, or encourages or offers incentives for physicians or other health care providers to prescribe.

(4) **Effective date**--The date that the health benefit plan's current prescription drug benefit levels became effective, or the date the subscriber's coverage first became effective, whichever is later.

(5) **Enrollee**--A person covered by a health benefit plan.

(6) **Enrollee identification card**--A printed card issued to enrollees of a health benefit plan that includes all necessary information to allow an enrollee to access all coverage under the health benefit plan.

(7) **Health benefit plan**--As described in Insurance Code §1369.151 [Article 21-53L], including a health benefit plan providing coverage for pharmacy benefits only, but not those described in Insurance Code §1369.152. This definition includes the term, "plan," as defined in Insurance Code §4151.001(4) [Article 21-07-6, §1(6)], but does not include a self-funded employee welfare benefit plan exempt from state regulation under [covered by] ERISA, 29 U.S.C. §1002(1)(A).

(8) **Identification code**--Any unique code used [utilized] by an issuer of a health benefit plan, administrator, or pharmacy benefit manager that identifies and differentiates among [amongst] enrollees.

(9) **Issuer**--Those entities described [identified] in Insurance Code §1369.151, but not those excluded by Insurance Code §1369.152 [Article 21-53L, §2(a)(1) - (8)].

(10) **Pharmacy benefit manager**--As defined in Insurance Code §4151.151 [Article 21-07-6, §1(9)], but does not include a pharmacy benefit manager for a self-funded employee welfare benefit plan exempt from state regulation under [covered by] ERISA, 29 U.S.C. §1002(1)(A).

(11) **Pharmacy benefits**--Coverage in a health benefit plan for prescription drugs that are ordinarily and customarily dispensed by a pharmacy or pharmacist licensed under the Texas Pharmacy Act, Occupations Code §551.001, et seq.

(12) **Standard identification card**--A printed card containing the written information required by §21.3003(b) of this title [subchapter] (relating to Standard Identification Cards).

(13) **Subscriber**--The individual who is the contract holder and who is responsible for payment of premiums to the issuer of an individual health benefit plan; or the individual who is the certificate holder and whose employment or membership status, except for family dependency, is the basis for eligibility for enrollment in a [group] health benefit plan.

#### §21.3003. *Standard Identification Cards.*

(a) The issuer of a health benefit plan that provides pharmacy benefits, or a pharmacy benefit manager or administrator issuing standard identification cards to enrollees must [shall] issue standard identification cards as follows:

(1) For a subscriber who is an enrollee, and who has no enrolled dependents, a single card must [shall] be issued to the subscriber, with additional cards available on [upon] request.

(2) For a subscriber who is an enrollee, and who has enrolled dependents, either:

(A) a card must [shall] be issued to the subscriber and to each of the enrolled dependents, with additional cards available on [upon] request; or

(B) two cards must [shall] be issued to the subscriber for use by the subscriber and all enrolled dependents, with additional cards available on [upon] request.

(3) For coverage under an individual health benefit plan in which the subscriber is not an enrollee, or for coverage under a [group] health benefit plan that [which] is continued by an enrollee under [pursuant to] Insurance Code Chapter 1251, Subchapter E [Article 3.51-6, §3B], either:

(A) a card must [shall] be issued to each enrollee, with additional cards available on [upon] request; or

(B) two cards must [shall] be issued for use by all enrollees, with additional cards available on [upon] request.

(b) Each standard identification card issued must [shall], at all times the card is in effect, include current information on the front of each identification card as follows:

(1) the enrolled subscriber's or enrolled dependents' names and identification codes, as follows:

(A) for [For] cards issued under [pursuant to] subsection (a)(1) of this section, the enrolled subscriber's name and identification code;

(B) for [For] cards issued under [pursuant to] subsection (a)(2)(A) of this section, the enrolled subscriber's name and identification code on the enrolled subscriber's card, and on each enrolled dependent's card, the name and identification code of the enrolled dependent to whom the card will be issued;

(C) for [For] cards issued under [pursuant to] subsection (a)(2)(B) of this section, the names and identification codes of the enrolled subscriber and the names and identification codes of all the enrolled dependents;

(D) for [For] cards issued under [pursuant to] subsection (a)(3)(A) of this section, on each enrolled dependent's card, the name and identification code of the enrolled dependent to whom the card will be issued;

(E) for [For] cards issued under [pursuant to] subsection (a)(3)(B) of this section, the names and identification codes of all enrolled dependents;

(2) [if applicable,] the name or logo of the issuer, or of the administrator or pharmacy benefit manager that is administering the pharmacy benefits, if different from the health benefit plan issuer;

[(3) the name or logo of the administrator or pharmacy benefit manager that is administering the pharmacy benefits, if different from the health benefit plan;]

(3) [(4)] as applicable, the group number applicable to the enrollee(s) covered by a group health benefit plan or the policy number or evidence of coverage number applicable to the enrollee(s) covered by an individual health benefit plan;

(4) [(5)] the effective date of coverage;

[(6) a telephone number of an appropriate person for purposes of obtaining information relating to the pharmacy benefits provided under the health benefit plan;]

(5) [(7)] as applicable, the corresponding copayment or coinsurance for generic and brand-name drugs; provided that, if the health benefit plan uses a drug formulary with benefit levels in addition to generic and brand-name prescription drugs, the card must [shall] include the corresponding copayments or coinsurance for each tier level of the drug formulary. In addition to disclosure of each benefit

level, the card may include a term such as "variable," to reflect benefit designs not fully revealed by the drug formulary tier disclosure; ~~[and]~~

(6) [(8)] as applicable, the International Identification Number, also known as the Banking Identification Number, assigned to the administrator or pharmacy benefit manager by the American National Standards Institute; ~~and[-]~~

(7) for a plan issued under Insurance Code Chapters 843 or 1301, the letters "TDI" or "DOI" prominently displayed.

(c) In addition to the information required under subsection (b) of this section, the issuer of a health benefit plan must include on the identification card of each enrollee a telephone number of an appropriate person for purposes of obtaining information relating to the pharmacy benefits provided under the health benefit plan.

(d) [(e)] Nothing in this section prohibits the issuer of a health benefit plan, or an administrator or pharmacy benefit manager, from issuing a standard identification card containing a magnetic strip or other technological component enabling the electronic transmission of information, provided that the information required by subsections [subsection] (b) and (c) of this section is printed on the card.

#### *§21.3004. Issuance of Standard Identification Cards.*

(a) An issuer of a health benefit plan, or an administrator or pharmacy benefit manager, is not required to issue a standard identification card in addition to an enrollee identification card if:

(1) the enrollee identification card contains the information required by §21.3003(b) and (c) of this title [subchapter] (relating to Standard Identification Cards); and

(2) the enrollee identification card is issued in accordance with §21.3003(a) of this title [subchapter] and subsections (c) and (d) of this section.

(b) Under [Pursuant to] subsection (a) of this section, if a standard identification card is required to be issued, and an administrator or pharmacy benefit manager administers a health benefit plan of an issuer, the administrator or pharmacy benefit manager and the issuer must [shall] enter into an agreement as to which entity will issue the standard identification card in accordance with this subchapter.

(c) If [Subject to §21.3005(a) and (b) of this subchapter (relating to Previously Issued Identification Cards); when] an administrator or pharmacy benefit manager for a health benefit plan is designated or required to issue a standard identification card, the administrator or pharmacy benefit manager must [shall] issue the standard identification card in accordance with this subchapter not later than the 30th calendar day after the date the administrator or pharmacy benefit manager receives notice from the issuer[;] or [from] the health benefit plan[;] that the enrollee is eligible for the pharmacy benefits.

(d) If [Subject to §21.3005(a) and (b); if] the issuer of a health benefit plan is required to issue a standard identification card, the issuer of the health benefit plan must [shall] issue the standard identification card in accordance with this subchapter not later than the 30th calendar day after the enrollee is eligible for pharmacy benefits.

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 January 20, 2016.

TRD-201600230



## DIVISION 3. OFF-LABEL DRUGS

### 28 TAC §21.3010, §21.3011

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§36.001, 1369.004, and 1369.005. Section 1369.004 describes the drug coverage a health benefit plan that covers drugs is required to provide for treatment of an enrollee for a chronic, disabling, or life-threatening illness; §1369.005 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter A; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to §21.3010 and §21.3011 affect the following statutes: Insurance Code §§36.001, 1369.001(1) and (3), 1369.002, 1369.004, and 1369.005.

#### *§21.3010. Definitions; Coverage of Off-Label Drugs.*

The following words and terms, when used in this division [§§21.3010 - 21.3011 of this subchapter (relating to off-label drugs) shall] have the following meanings, unless the context clearly indicates otherwise:

(1) Chronic illness--A disease, syndrome, or condition of expected long duration, showing little change or slow progression.

(2) Contraindication--As defined in Insurance Code §1369.001(1) [Article 21.53M].

(3) Disabling illness--A disease, syndrome, or condition determined by an enrollee's health care practitioner to have caused or have the potential to cause:

(A) a physical or mental impairment that substantially limits, or may limit, one or more of the activities of daily living of the enrollee including, but not limited to, eating, bathing, dressing, grooming, routine hair and skin care, meal preparation, exercising, toileting, and transfer and ambulation;

(B) an impairment substantially limiting an enrollee's cognitive acuity;

(C) an impairment substantially limiting an enrollee's ability to work, home make [~~home-make~~], or engage in leisure or educational activities; or

(D) a condition regarded as an impairment by an enrollee's licensed health care practitioner.

(4) Drug--As defined in the Texas Pharmacy Act, Occupations Code §551.003.

(5) Enrollee--A person covered by a health benefit plan.

(6) Health benefit plan--As described in Insurance Code §1369.002, but not those described in §1369.003 [Article 21.53M]. This term includes health benefit plans providing coverage for pharmacy benefits only.

(7) Health care practitioner--An advanced practice nurse, doctor of medicine, doctor of dentistry, physician assistant, doctor of

osteopathy, doctor of podiatry, or other licensed person with prescriptive authority.

(8) Impairment--Any loss or abnormality of psychological, physiological, or anatomical structure or function.

(9) Indication--As defined in Insurance Code §1369.001(3) [Article 21.53M].

(10) Issuer--Those entities described [identified] in Insurance Code §1369.002, but not those excluded by Insurance Code §1369.003 [Article 21.53M, §2(a)(1)-(8)].

(11) Life-threatening illness--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(12) Off-label drug use--The use of a drug that is approved by the Food and Drug Administration for the treatment of one medical condition but is used to treat another medical condition, or at different dosage forms, dosage regimens, populations, or other parameters not mentioned in the approved labeling.

(13) Peer-reviewed medical literature--A published scientific study in a journal or other publication in which original manuscripts are published only after they have been critically reviewed by unbiased independent experts in the same field[.] for scientific accuracy, validity, and reliability, and have been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications [that are] sponsored to a significant extent by a pharmaceutical manufacturing company or an issuer of a health benefit plan.

(14) Standard drug reference compendia--

(A) The American Hospital Formulary Service-Drug Information; or

(B) The United States Pharmacopoeia-Drug Information.

#### *§21.3011. Minimum Standards of Coverage for Off-Label Drug Use.*

(a) An issuer of a health benefit plan that provides coverage for drugs must [~~shall~~] provide coverage for any drug prescribed to treat an enrollee for a covered chronic, disabling, or life-threatening illness if the drug:

(1) has been approved by the Food and Drug Administration for at least one indication; and

(2) is recognized for treatment of the indication for which the drug is prescribed in:

(A) a standard drug reference compendium; or

(B) substantially accepted peer-reviewed medical literature.

(b) Coverage of a drug required under subsection (a) of this section:

(1) must [~~shall~~] include services medically necessary to administer the drug, including any supply medically necessary to administer the drug, if the supply is a covered benefit under the health benefit plan;

(2) may be denied based on a finding that the use of the drug is not medically necessary to treat the enrollee's disease, syndrome, or condition, so long as the finding is not based on the fact that the drug is being prescribed for an off-label use;

(3) may not be denied solely on the basis that the drug does not appear on the formulary. If the issuer of a health benefit plan refuses to provide an off-label drug that is not included in a drug formulary, and the enrollee's physician or provider has determined is medically necessary for an off-label use, the refusal constitutes an adverse determination for purposes of Insurance Code §4201.002(1) [Article 21.58A, §2]. An enrollee may appeal the adverse determination under Insurance Code Chapter 4201, Subchapters H and I [§§6 and 6A of Article 21.58A];

(4) may be denied for a drug prescribed to treat any disease or condition that is excluded from coverage under the health benefit plan;

(5) may be denied for a drug prescribed for outpatient use if coverage of drugs under that particular health benefit plan is limited to the hospitalization of the enrollee; or

(6) may be denied for a drug that the Food and Drug Administration has determined to be a contraindication for treatment of the current disease or condition.

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 January 20, 2016.

TRD-201600231

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

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



## DIVISION 4. PRESCRIPTION DRUG FORMULARY COVERAGE AND DISCLOSURE REQUIREMENTS

### 28 TAC §§21.3020, 21.3022, 21.3023, 21.3030 - 21.3034

STATUTORY AUTHORITY. The amendments to §§21.3020, 21.3022, 21.3023 and new §§21.3030 - 21.3034 are proposed under Insurance Code §§1369.005, 1369.052, 1369.053, 1369.054, 1369.0541, 1369.0542; 1369.0543, 1369.0544, 1369.055, 1369.056, 1369.057, 1369.151, 1369.154, and 36.001. Section 1369.005 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter A; §1369.052 extends the applicability of Subchapter B to individual, small group, and large group health benefit plans; §1369.053 provides exceptions to the applicability of Insurance Code Subchapter B, and it exempts CHIP and Medicaid Managed Care Organizations; §1369.054 describes the notice and disclosure of certain information required if an issuer of a health benefit plan covers prescription drugs and uses one or more drug formularies to specify the prescription drugs covered under the plan; §1369.0541 specifies conditions under which modifications of drug coverage may occur and creates notice requirements; §1369.0542 requires a health benefit plan issuer to post formulary information on its website as required by the commissioner by rule; §1369.0543 describes the required formulary disclosures and requires the commissioner to adopt rule requirements to promote consistency and clarity in the

disclosure of formularies to facilitate consumers when comparison shopping among health benefit plans; §1369.0544 allows a health benefit plan issuer to make the formulary information available through a toll-free telephone number; §1369.055 describes the continuation of drug coverage requirements an issuer of a health benefit plan must offer if prescription drugs are covered; §1369.056 describes the circumstances under which a refusal of a health benefit plan issuer to provide benefits to an enrollee for a prescription drug is an adverse determination; §1369.057 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter B; §1369.151 extends the applicability of Insurance Code Chapter 1369, Subchapter D to include state employee, Medicaid, and CHIP plans; §1369.154 provides that the commissioner may adopt rules to implement Insurance Code Chapter 1369, Subchapter D; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to §§21.3020, 21.3022, 21.3023 and new §§21.3030 - 21.3034 affect the following statutes: Insurance Code §§36.001, 1369.005, 1369.052, 1369.053, 1369.054, 1369.0541, 1369.0542; 1369.0543, 1369.0544, 1369.055, 1369.056, 1369.057, 1369.151, 1369.154, 4201.002, and 4151.001(1) and (4).

#### §21.3020. Definitions; Prescription Drug Formulary.

The following words and terms, when used in this division [§§21.3020-21.3023 of this subchapter (relating to prescription drug formulary benefits), shall] have the following meanings, unless the context clearly indicates otherwise:

(1) Adverse determination--As defined in Insurance Code §4201.002. [A determination upon utilization review that the health care services furnished or proposed to be furnished to an enrollee are not medically necessary or not appropriate.]

(2) Allowed amount--The amount that the applicable health benefit plan issuer allows as reimbursement for a health care service, supply, or prescription drug, including reimbursement amounts for which a patient is responsible due to deductibles, copayments, or coinsurance.

(3) Commonly prescribed drug list--A list of the 150 most frequently prescribed drugs published annually by the New York State Board of Pharmacy, available at <https://apps.health.ny.gov/pdpw/DrugInfo/DrugInfo.action>.

(4) [(2)] Contracted benefit level--The copayment amount or coinsurance percentage established at the beginning of the current plan year and described [set forth] in the coverage documentation.

(5) [(3)] Coverage documentation--A policy, certificate of coverage, evidence of coverage, enrollee handbook, or a plan document distributed by an issuer[,], or its delegated entity[,], to an enrollee or to the master contract holder, for distribution to enrollees.

(6) [(4)] Delegated entity--An entity, or an association of [which by itself or through one or more] entities, including [but not limited to] third-party administrators, as they are defined in Insurance Code §4151.001(1), and pharmacy benefit managers, as they are defined in Insurance Code §4151.151, that [as those terms are defined in Insurance Code Article 21.07-6, which] provides reimbursement for covered services or undertakes to arrange for or provide benefits or services to an enrollee under a [group] health benefit plan, and that [which] performs on behalf of the issuer of a [group] health benefit plan, any

function regulated by this division [§§21.3020 - 21.3023 of this subchapter].

(7) Direct electronic link--A hyperlink that, when clicked, delivers a user directly to the applicable website destination.

(8) Drug--As defined in the Texas Pharmacy Act, Occupations Code §551.003.

(9) [(5)] Drug formulary or formulary--A list of drugs for which a health benefit plan provides coverage, approves payment, or encourages or offers incentives for physicians or other health care providers to prescribe.

(10) [(6)] Enrollee--As defined in Insurance Code §1369.051(2) [Article 21.52J].

(11) [(7)] Health [Group health] benefit plan--An insurance policy or evidence of coverage as [As] described in Insurance Code §1369.052, but not those described in Insurance Code §1369.053, that provides coverage for a discrete package of benefits, paired with specific cost-sharing parameters [Article 21.52J]. This term includes [group] health benefit plans providing coverage for pharmacy benefits only.

(12) [(8)] Issuer--Those entities described [identified] in Insurance Code §1369.052, but not those excluded by Insurance Code §1369.053 [Article 21.52J, Sec. 2(a)(1)-(8)].

(13) [(9)] Multitier [Multi-tier] formulary--A drug formulary with benefit levels in addition to generic and brand name prescription drug benefit levels.

(14) Off-label drug use--The use of a drug that is approved by the Food and Drug Administration for the treatment of one medical condition but is used to treat another medical condition, or at different dosage forms, dosage regimens, populations, or other parameters not mentioned in the approved labeling.

(15) [(40)] Plain language--As prescribed in §3.602 of this title (relating to Plain Language Requirements).

(16) [(41)] Plan year--A 365-day period that begins on the date the [group] health benefit plan's coverage commences, or a period of one full calendar year as defined in the [group] health benefit plan's coverage documentation.

(17) [(42)] Prescription drug--As defined in Insurance Code §1369.051(4) [Article 21.52J].

(18) [(43)] Renewal date--For each [group] health benefit plan, the earlier of the date specified in the coverage documentation for renewal or the policy anniversary date. In determining the renewal date for association or multiple employer trust [group] health benefit plans, issuers may use the date specified for renewal or the policy anniversary date of either the master contract, plan document, or certificate of coverage of each group in the association or trust. Issuers must [shall] use the same method of determining renewal dates for all [group] health benefit plans.

(19) Summary health plan document--A document summarizing the coverage provided under a health benefit plan, including:

(A) a summary of benefits and coverage, as required under 42 U.S.C. §300gg-15 and 45 CFR §147.200; and

(B) a disclosure of terms and conditions of a policy, as required under §3.3705(b) of this title (relating to Nature of Communications with Insureds; Readability, Mandatory Disclosure Requirements, and Plan Designations), or an evidence of coverage, as required under §11.1600(b) of this title (relating to Information to Prospective and Current Contract Holders and Enrollees).

#### §21.3022. *Continuation of Benefits.*

(a) An issuer of a [group] health benefit plan that offers prescription drug benefits must [shall] make a prescription drug that was approved or covered for a medical condition or mental illness available to each enrollee at the contracted benefit level until the [group] health benefit plan renewal date. Modifications to drug coverage are not permitted until the plan's renewal date, [regardless of whether the prescribed drug has been removed from the group health benefit plan's drug formulary.]

(b) A health benefit plan issuer may make modifications to drug coverage provided under a health benefit plan if:

(1) the modification occurs at the time of coverage renewal;

(2) the modification is effective uniformly among all group health benefit plan sponsors covered by identical or substantially identical health benefit plans, or all individuals covered by identical or substantially identical individual health benefit plans, as applicable; and

(3) not later than the 60th day before the date the modification is effective, the issuer provides written notice of the modification to the commissioner, each affected group health benefit plan sponsor, each affected enrollee in an affected group health benefit plan, and each affected individual health benefit plan holder.

(c) For the purposes of this section, modifications to drug coverage include:

(1) removing a drug from a formulary;

(2) adding a requirement that an enrollee receive prior authorization for a drug;

(3) imposing or altering a quantity limit for a drug;

(4) imposing a step-therapy restriction for a drug; and

(5) moving a drug to a higher cost-sharing tier unless a generic drug alternative is available.

[(b) Continuation of benefits for those group health benefit plans that utilize a multi-tier formulary, regardless of whether the prescription drug has been moved to another formulary tier, shall be the same as that specified in subsection (a) of this section.]

[(c) An issuer of a group health benefit plan, or its delegated entity, that provides coverage for prescription drugs, and did not utilize a multi-tier formulary at the beginning of the plan year, but which later adopts a multi-tier formulary, shall continue to make a prescription drug that was approved or covered for a medical condition or a mental illness, available to each enrollee at the same contracted benefit level before the multi-tier formulary was adopted, until the group health benefit plan's renewal date.]

#### §21.3023. *Nonformulary Prescription Drugs; Adverse Determination.*

If the issuer of a [group] health benefit plan, its delegated entity, or their employees or agents refuses to provide coverage for a prescription drug that is not included in a drug formulary, and the enrollee's physician or other health care provider with prescriptive authority has determined the prescription drug is medically necessary to treat a condition covered by the enrollee's [group] health benefit plan, the refusal to provide coverage for the prescription drug constitutes an adverse determination for the purpose of Insurance Code Chapter 4201 [Article 21.58A, §2]. An enrollee may appeal the adverse determination under Insurance Code Chapter 4201, Subchapters H and I [Article 21.58A, §§6 and 6A], and the issuer of the [group] health benefit plan, and its employees or agents, must [shall] review and resolve the appeal in accordance with those sections.

§21.3030. Availability of Formulary Information.

(a) An issuer of a health benefit plan, or its delegated entity, that covers prescription drugs and uses one or more drug formularies must provide, in plain language, the disclosures required by Insurance Code §1369.054. The plain language disclosure must be in the coverage documentation provided to each enrollee and include the address and telephone number where the enrollee may contact the issuer of the health benefit plan, or its delegated entity, to determine if a specific prescription drug is on the formulary.

(b) An issuer of a health benefit plan must allow a current or prospective enrollee to obtain a paper copy of the formulary information required under §21.3032 and §21.3033 of this title (relating to Formulary Disclosure Requirements and Facilitating Comparison Shopping) by calling the toll-free number listed on the summary health plan document.

(c) An issuer may elect to exclude the plan-level cost-sharing information required under §21.3031(c) of this title (relating to Formulary Information on Issuer's Website) from the paper format if the document provides a toll-free number through which a current or prospective enrollee may obtain formulary information contained in §21.3032 and §21.3033, including the plan-specific cost-sharing information required under §21.3032(c) for any formulary drug.

(d) The paper copy of the formulary information must use at least 10-point font.

§21.3031. Formulary Information on Issuer's Website.

(a) Except as permitted under subsection (c) of this section, an issuer of a health benefit plan must display the formulary information required under §21.3032 and §21.3033 of this title (relating to Formulary Disclosure Requirements and Facilitating Comparison Shopping) on a website that is publicly accessible to enrollees, prospective enrollees, and others without requiring the use of paid software, a password, user name, or personally identifiable information. The formulary information must:

- (1) be electronically searchable by drug name; and
- (2) use at least 10-point font.

(b) Each summary health plan document must include a direct electronic link to the website that contains the formulary information. The direct electronic link must deliver the user directly to the formulary information associated with the health benefit plan described by the health plan document, without requiring additional navigation or user input.

(c) As an alternative to displaying the information required under §21.3032(c) of this title alongside the formulary information required generally under subsection (a) of this section, a health benefit plan issuer may elect to make plan-specific cost-sharing information available through a web-based tool. A direct electronic link to the web-based tool must be included on each page of the formulary disclosure that lists each drug. The purpose of this alternative method is to encourage the provision of the most timely and accurate drug price information. In order to qualify for this alternative method, a web-based tool must:

- (1) be publicly accessible to enrollees, prospective enrollees, and others without requiring the use of paid software or the necessity of a password, user name, or personally identifiable information;
- (2) allow consumers to electronically search formulary information by the name under which the health benefit plan is marketed;
- (3) include the following plan-specific cost-sharing information for each drug:

(A) whether the drug is subject to a pharmacy or medical deductible and the amount of the applicable deductible;

(B) the full price of the drug, based on the plan's median allowed amount for the drug using the most up-to-date data available;

(C) the cost-sharing amount the enrollee will owe for each drug under the pharmacy or medical benefit in a retail, mail order, or physician-administered setting, if applicable, after the enrollee has met any deductible requirement, including as applicable:

(i) the dollar amount of a copayment; and

(ii) for a drug subject to coinsurance, the dollar amount of cost-sharing the enrollee will owe, calculated based on the full price of the drug and the cost-sharing parameters under the enrollee's health benefit plan for the tier under which the drug is assigned;

(4) include, prominently displayed on the web page under the header "Formulary by Health Benefit Plan," a direct electronic link to a chart displaying each formulary that applies to each health benefit plan issued by the issuer and includes a direct electronic link to the Summary of Benefits and Coverage and formulary document for each health plan listed. This chart may be limited to health benefit plans being sold in the market in which the applicable health benefit plan is issued.

§21.3032. Formulary Disclosure Requirements.

(a) The formulary information required under this section must include each prescription drug covered under the plan that is dispensed in a network pharmacy or administered by a physician or health care provider and clearly differentiate between drugs covered under the plan's pharmacy benefits and medical benefits. Information pertaining to drugs covered under the plan's medical benefits may be provided as an addendum to the formulary and must include each parameter that is applicable.

(b) The formulary information must include the following coverage information for each drug:

- (1) an explanation of coverage under the health benefit plan;
- (2) an indication of whether the drug is preferred, if applicable, under the plan;
- (3) a disclosure of any prior authorization, step therapy, or other protocol requirement that limits access to the drug; and
- (4) the specific tier the drug falls under, if the plan uses a multitier formulary.

(c) The formulary information must include the following plan-specific cost-sharing information for each drug:

(1) whether the drug is subject to a pharmacy or medical deductible and the amount of the applicable deductible;

(2) the cost-sharing amount for each drug under the pharmacy or medical benefit, in a retail, mail order, or physician-administered setting, if applicable, after the enrollee has met any deductible requirement, including, as applicable:

- (A) the dollar amount of a copayment; and
- (B) for a drug subject to coinsurance:

(i) an enrollee's cost-sharing amount stated in dollars; or

(ii) a cost-sharing range denoted as follows:

(I) under \$100 - \$;

(II) \$100 - \$250 - \$\$;

(III) \$251 - \$500 - \$\$\$;

(IV) \$501 - \$1,000 - \$\$\$\$; or

(V) over \$1,000 - \$\$\$\$\$.

(d) Cost-sharing amounts must reflect the cost to the consumer, rounded to the next highest dollar amount, for a month-long supply unless otherwise noted. Cost-sharing information reflecting the cost for a different duration supply should indicate the applicable duration. The cost-sharing amount for a given drug must be calculated based on the plan's median allowed amount for the drug using the most up-to-date data available and the cost-sharing parameters under the enrollee's health benefit plan for the tier under which the drug is assigned.

(e) Any formulary information presented using abbreviations must provide a legend on each page explaining the meaning of each abbreviation used, including the dollar amounts that correspond to the cost-sharing range.

§21.3033. Facilitating Comparison Shopping.

(a) The formulary information must include a summary titled "Summary of Formulary Benefits" that includes this statement: "The information in this document is designed to help you understand the prescription drug benefits offered under this plan and compare these benefits to those offered by other plans. Information contained in this summary is designed to help you compare both the value and scope of formulary benefits." The summary must also include, in the following order:

(1) Under the header, "How to Find Information on the Cost of Prescription Drugs," a description of how a consumer may use the plan's summary health plan document, formulary information, and web-based tool, if applicable, to determine the cost-sharing they may owe, and an explanation that cost-sharing information reflects a consumer's share of the cost after meeting any applicable deductible, calculated using an estimate of the full price of the drug, which is based on the plan's median allowed amount at a given point in time.

(2) Under the header, "Formulary by Health Benefit Plan," a chart that displays each formulary that applies to each health benefit plan issued by the issuer and includes a direct electronic link to the Summary of Benefits and Coverage for each health plan listed. This chart may be limited to health benefit plans being sold in the market in which the applicable health benefit plan is issued.

(3) Under the header, "Drugs by Cost-Sharing Tier," if the drug formulary is a multitier formulary, a summary that displays for all drugs in the formulary:

(A) the total number of drugs in each cost-sharing tier;  
and

(B) the percent of drugs in each cost-sharing tier.

(4) Under the header, "Coverage for Commonly Prescribed Drugs":

(A) the percent of the drugs contained on the commonly prescribed drug list that are included in the formulary as covered, as of the date the information is provided, accompanied by the label, "Percent of Commonly Prescribed Drugs Included in this Plan," separately specifying:

(i) the percent of drugs contained on the commonly prescribed drug list that are covered without prior authorization, step therapy, or other protocol requirements that limit access to prescription drugs, accompanied by the label, "Percent of Commonly Prescribed

Drugs Covered NOT Subject to Medical Management Requirements," and;

(ii) the percent of drugs contained on the commonly prescribed drug list that are covered subject to prior authorization, step therapy, or other protocol requirements that limit access to prescription drugs, accompanied by the label, "Percent of Commonly Prescribed Drugs Covered Subject to Medical Management Requirements";

(B) the percent of drugs contained on the commonly prescribed drug list that are not covered in the formulary, accompanied by the label, "Percent of Commonly Prescribed Drugs NOT Included in this Plan."

(5) Under the header, "How Prescription Drugs are Covered under the Plan":

(A) under a section titled, "Formulary Composition," an explanation of the method the issuer uses to determine the prescription drugs to be included in or excluded from the formulary, an explanation of whether the formulary is open or closed, and a statement of how often the issuer reviews the contents of the formulary.

(B) Under a section titled, "Right to Appeal," an explanation that if a drug is not covered under the formulary, but the enrollee's physician has determined that the drug is medically necessary, the consumer has the right to appeal, consistent with §21.3023 of this title (relating to Nonformulary Prescription Drugs; Adverse Determination) and Insurance Code §1369.056. A statement of how cost-sharing will be determined for drugs covered as a result of a successful appeal.

(C) Under a section titled, "Continuation of Coverage," an explanation of a consumer's right to continued coverage for a prescription drug at the coverage level or tier at which the drug was covered at the beginning of the plan year, until the enrollee's plan renewal date, consistent with §21.3022 of this title (relating to Continuation of Benefits) and Insurance Code §1369.055 and §1369.0541.

(D) Under a section titled, "Off-Label Drug Use," an explanation of how formulary drugs are covered under the plan, including an explanation of coverage for off-label drug use.

(E) Under a section titled, "Cost-Sharing," an explanation of how cost-sharing is determined under the plan, including whether a deductible applies to prescription drug coverage; how cost-sharing for prescription drugs counts towards the plan's deductible; how drugs are categorized into each of the formulary tiers or cost-sharing levels, if the drug formulary is a multitier formulary; the difference between preferred and nonpreferred drugs, if applicable; the difference in coverage for drugs dispensed from in-network and out-of-network pharmacies; and the difference in coverage for drugs dispensed in a retail pharmacy and a mail-order pharmacy, if applicable.

(F) Under a section titled, "Medical Management Requirements," an explanation of each type of medical management requirement used by the health benefit plan, including prior authorization, step therapy, or other protocol requirements that limit access to prescription drugs, as applicable.

(b) Formulary information must include the summary information required under subsection (a) of this section beginning on the first page of the formulary document under the title, "Summary of Formulary Benefits."

§21.3034. Effective Date.

(a) The requirements under §§21.3030 - 21.3033 of this title (relating to Availability of Formulary Information, Formulary Disclosure Requirements, and Facilitating Comparison Shopping) are effec-

tive for plans marketed in the individual market on or after November 1, 2016, with an effective date on or after January 1, 2017.

(b) The requirements under §§21.3030 - 21.3033 of this title are effective for plans marketed in the group market on or after September 1, 2017.

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 January 20, 2016.

TRD-201600232

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

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



### 28 TAC §21.3005, §21.3021

**STATUTORY AUTHORITY.** The repeal of §21.3005 and §21.3021 is proposed under Insurance Code §§1369.052, 1369.054, 1369.057, 1369.154 and 36.001. Section 1369.052 extends the applicability of Subchapter B to individual, small group, and large group health benefit plans; §1369.054 provides the notice and disclosure of certain information required by issuers of a health benefit plan that covers prescription drugs and uses one or more drug formularies to specify the prescription drugs covered under the plan; §1369.057 provides that the commissioner may adopt rules to implement Chapter 1369, Subchapter B; §1369.154 provides that the commissioner may adopt rules to implement Chapter 1369, Subchapter D; and §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The proposed repeal of §21.3005 and §21.3021 affect the following statutes: Insurance Code §§36.001, 1369.052, 1369.054, 1369.057, and 1369.154.

§21.3005. *Previously Issued Identification Cards.*

§21.3021. *Required Disclosure of Drug Formulary.*

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 January 20, 2016.

TRD-201600228

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: March 6, 2016

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



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 305. CONSOLIDATED PERMITS SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

### 30 TAC §305.132

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §305.132.

Background and Summary of the Factual Basis for the Proposed Rule

Senate Bill (SB) 912, passed by the 84th Texas Legislature, 2015, amends Texas Water Code (TWC), §26.039 to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. SB 912 also requires the commission to establish standard methods for calculating the volume of accidental discharges or spills of treated or untreated wastewater related to this section; to consider compliance history of the individual; and to establish procedures for formatting and submitting a monthly summary. Additionally, SB 912 requires TCEQ to adopt rules necessary to implement TWC, §26.039 no later than June 1, 2016. This rulemaking proposes new §305.132 in order to implement the requirements of SB 912 for permitted wastewater treatment facilities.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend 30 TAC Chapter 327, Spill Prevention and Control.

Section Discussion

*§305.132, Special Conditions for Certain Wastewater Discharges*

The commission proposes new §305.132(a) to define terms used in the section.

The commission proposes new §305.132(a)(1) to provide a definition of a collection system to mean pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility. This definition is consistent with the definition in 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

The commission proposes new §305.132(a)(2) to provide a definition of history of noncompliance to mean the history of non-reporting of accidental discharges or spills of treated or untreated wastewater.

The commission proposes new §305.132(a)(3) to provide a definition of local government to mean an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution. This definition is consistent with the definition in TWC, Chapter 26.

The commission proposes new §305.132(a)(4) to provide a definition of wastewater treatment facility to mean all contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area. This definition is consistent with the definition in Chapter 217.

The commission proposes new §305.132(b) to allow for an accidental discharge or spill that occurs at wastewater treatment

facilities or collection systems owned or operated by a local government, and that does not endanger human health or safety or the environment, to be reported to the executive director as a monthly summary.

The commission proposes new §305.132(b)(1) which specifies that the accidental discharge or spill must be 1,000 gallons or less.

The commission proposes new §305.132(b)(2) which specifies that the accidental discharge or spill must not be associated with another simultaneous accidental discharge or spill of treated or untreated wastewater.

The commission proposes new §305.132(b)(3) which specifies that the accidental discharge or spill must be controlled or removed before it enters water in the state or adversely affects a public or private source of drinking water.

The commission proposes new §305.132(b)(4) which specifies that the accidental discharge or spill must not be subject to local regulatory control and reporting requirements.

The commission proposes new §305.132(c) which specifies that the summary must be reported to the executive director by the 20th day of the month for accidental discharges or spills of treated or untreated wastewater that occurred during the previous month. This date is consistent with other reporting requirements in the permit. This subsection also specifies that the summary must include the location; volume; content; description of the accidental discharge or spill and its cause, including exact dates and times; and steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

The commission proposes new §305.132(d) to provide three standard methods for determining spill volumes.

The commission proposes new §305.132(d)(1) to describe visual estimates as the first of three standard methods. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill and then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50 gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill and then multiply by 50 to obtain the number of gallons discharged or spilled.

The commission proposes new §305.132(d)(2) to describe measured volume as the second of three standard methods. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

The commission proposes new §305.132(d)(3) to describe duration and flow rate as the third standard method. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

The commission proposes new §305.132(e) which specifies that the owner or operator must keep records of all accidental discharges or spills of treated or untreated wastewater reported under §305.132. The records must remain on-site for three years and be made immediately available to commission staff upon request. This three-year period for recordkeeping is consistent

with other records required to be maintained onsite by the permit.

The commission proposes new §305.132(f) which specifies that the executive director may require more frequent reporting based on the owner or operator's history of noncompliance.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule implements SB 912, which amended the TWC to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government.

Currently, all accidental discharges or spills of treated or untreated wastewater are required to be reported to TCEQ within 24 hours verbally and by written report within five days. SB 912 language allows for owners or operators of a wastewater treatment facility or collection system owned or operated by a local government to report accidental discharges or spills of treated or untreated wastewater on a monthly basis in the form of a summary if certain conditions are met. The conditions are: 1) the spill volume is 1,000 gallons or less; 2) it is not associated with another accidental discharge or spill; 3) it is controlled or removed before entering water in the state; 4) it does not adversely affect a public or private source of drinking water; 5) it will not endanger human health or safety or the environment; and 6) it is not otherwise subject to local regulatory control and reporting requirements.

There are an estimated 1,223 wastewater treatment facilities owned or operated by local governments that may be affected by the proposed rule. A noncompliance form is used to notify the agency of a discharge or spill. The noncompliance form is submitted to the agency by hard copy and by email. The proposed language will allow owners or operators to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. If a local government has numerous accidental discharges or spills of treated or untreated wastewater to report, there may be minor cost savings from the consolidation of notifications. Otherwise, no significant fiscal implications are anticipated for local governments that own or operate wastewater treatment facilities or collection systems as a result of the administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed new rule is in effect, the only public benefit anticipated from the changes seen in the proposed rule will be consistency with state law.

The proposed rule is not anticipated to result in fiscal implications for businesses or individuals. The exception to 24-hour verbal and five-day written reporting of accidental discharges or spills of treated or untreated wastewater only applies to wastewater treatment facilities or collection systems owned or operated by a local government.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect for small or micro-businesses. The proposed rule will only apply to a wastewater treatment facility or collection system owned or operated by a local government.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect and is necessary to comply with state law.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it revises procedural rules regarding when and how specific accidental discharges or spills of treated or untreated wastewater are to be reported. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912.

The proposed rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed rule revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater and is procedural in nature. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency,

but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this preamble.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

#### Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Plan (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. Therefore, the proposed rule is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 1, 2016 at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-024-305-CE. The comment period closes on March 7, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For

further information, please contact Macy Beauchamp, Program Support, (512) 239-0437.

#### Statutory Authority

The new section is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §26.039, concerning Accidental Discharges and Spills and TWC, §26.121, concerning Unauthorized Discharges Prohibited, which prohibits unauthorized discharges into or adjacent to water in the state.

The proposed new section implements TWC, §26.039 and Senate Bill 912 (84th Texas Legislature, 2015).

#### §305.132. Special Conditions for Certain Wastewater Discharges.

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

(1) Collection system--Pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility.

(2) History of noncompliance--History of non-reporting of accidental discharges or spills of treated or untreated wastewater.

(3) Local government--An incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(4) Wastewater treatment facility--All contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area.

(b) The owner or operator of a wastewater treatment facility or collection system that is owned or operated by a local government, may report accidental discharges or spills of treated or untreated wastewater that do not endanger human health or safety or the environment to the executive director as a monthly summary if each individual accidental discharge or spill:

(1) has a volume of 1,000 gallons or less;

(2) is not associated with another simultaneous accidental discharge or spill of treated or untreated wastewater;

(3) is controlled or removed before the accidental discharge or spill enters water in the state or adversely affects a public or private source of drinking water; and

(4) is not otherwise subject to local regulatory control and reporting requirements.

(c) The owner or operator shall submit a monthly summary to the executive director by the 20th day of the month for each accidental discharge or spill of treated or untreated wastewater that occurred during the previous month. The summary must include, at a minimum, the:

(1) location, volume and content of the accidental discharge or spill;

(2) description of the accidental discharge or spill;

(3) cause of the accidental discharge or spill;

(4) exact dates and times of the accidental discharge or spill; and

(5) steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

(d) The owner or operator must use one of the following methods for determining the volume of the discharge or spill.

(1) Visual estimate. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill and then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50 gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill then multiply by 50 to obtain the number of gallons discharged or spilled.

(2) Measured volume. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

(3) Duration and flow rate. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

(e) The owner or operator must keep records of all accidental discharges or spills of treated or untreated wastewater reported under this section. The records must remain on-site for three years and be made immediately available to commission staff upon request.

(f) The executive director may require more frequent reporting based on the owner or operator's history of noncompliance.

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 January 22, 2016.

TRD-201600278

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-2613



## CHAPTER 327. SPILL PREVENTION AND CONTROL

### 30 TAC §327.1, §327.32

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §327.1 and proposes new §327.32.

Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill (SB) 912, passed by the 84th Texas Legislature, 2015, amends Texas Water Code (TWC), §26.039 to allow individuals to report certain accidental discharges or spills of treated

or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. SB 912 also requires the commission to establish standard methods for calculating the volume of accidental discharges or spills of treated or untreated wastewater related to this section; to consider compliance history of the individual; and to establish procedures for formatting and submitting a monthly summary. Additionally, SB 912 requires TCEQ to adopt rules necessary to implement TWC, §26.039 no later than June 1, 2016. This rulemaking proposes to amend §327.1 and proposes new §327.32 in order to implement the requirements of SB 912 for unpermitted wastewater treatment facilities and collection systems.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also proposes to amend 30 TAC Chapter 305, Consolidated Permits. Section by Section Discussion

#### §327.1, *Applicability*

The commission proposes to amend §327.1(b)(7) to replace the phrase, "discharges not so authorized" with "unauthorized discharges" in order to improve readability and clarity.

The commission proposes §327.1(a)(10), which states that Chapter 327 is not applicable to accidental discharges or spills of treated or untreated wastewater that are reported in accordance with 30 TAC §305.132.

#### §327.32, *Reporting Requirements for Certain Accidental Discharges or Spills of Treated or Untreated Wastewater at Wastewater Treatment Facilities or Collection Systems*

The commission proposes new §327.32(a) to define terms used in the section.

The commission proposes new §327.32(a)(1) to provide a definition of a collection system to mean pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility. This definition is consistent with the definition in 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

The commission proposes new §327.32(a)(2) to provide a definition of history of noncompliance to mean the history of non-reporting of accidental discharges or spills of treated or untreated wastewater.

The commission proposes new §327.32(a)(3) to provide a definition of local government to mean an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution. This definition is consistent with the definition in TWC, Chapter 26.

The commission proposes new §327.32(a)(4) to provide a definition of wastewater treatment facility to mean all contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area. This definition is consistent with the definition in Chapter 217.

The commission proposes new §327.32(b) that states that unless the conditions in §327.32(c) exists, all accidental discharges or spills of treated or untreated wastewater shall be reported within 24 hours from the time of occurrence. A written submission shall be provided to the executive director within five days of occurrence. The written submission shall contain a description

of the accidental discharge or spill and its cause; the potential danger to human health or safety, or the environment; the duration of the accidental discharge or spill, including exact dates and times; the length of time that the accidental discharge or spill is expected to continue if it has not been corrected; and steps taken or planned to reduce, eliminate, and prevent recurrence of the accidental discharge or spill, as well as efforts made to mitigate its adverse effects.

The commission proposes new §327.32(c) to allow an accidental discharge or spill of treated or untreated wastewater that occurs at wastewater treatment facilities or collection systems owned or operated by a local government, and that does not endanger human health or safety or the environment, to be reported to the executive director as a monthly summary.

The commission proposes new §327.32(c)(1) which specifies that the accidental discharge or spill must be 1,000 gallons or less.

The commission proposes new §327.32(c)(2) which specifies that the accidental discharge or spill must not be associated with another simultaneous accidental discharge or spill of treated or untreated wastewater.

The commission proposes new §327.32(c)(3) which specifies that the accidental discharge or spill must be controlled or removed before it enters water in the state or adversely affects a public or private source of drinking water.

The commission proposes new §327.32(c)(4) which specifies that the accidental discharge or spill must not be subject to local regulatory control and reporting requirements.

The commission proposes new §327.32(d) which specifies that the summary must be reported to the executive director by the 20th day of the month for spills of treated or untreated wastewater that have occurred during the previous month. This date is consistent with the reporting requirements for permitted facilities. This clause also specifies that the summary must include the location; volume; content; description of the accidental discharge or spill and its cause, including exact dates and times; and steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

The commission proposes new §327.32(e) to provide three standard methods for determining spill volumes.

The commission proposes new §327.32(e)(1). This paragraph describes visual estimates as the first of three standard methods. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50 gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill then multiply by 50 to obtain the number of gallons discharged or spilled.

The commission proposes new §327.32(e)(2). This paragraph describes volume as the second of three standard methods. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

The commission proposes new §327.32(e)(3). This paragraph describes duration and flow rate as the third standard method. Identify separate estimates for the duration and the flow rate of

the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

The commission proposes new §327.32(f) which specifies that the responsible person must keep records of all accidental discharges or spills of treated or untreated wastewater reported under §327.32. The records must remain on-site for three years and be made immediately available to commission staff upon request. This three-year period is consistent with recordkeeping requirements for permitted facilities.

The commission proposes new §327.32(g) which specifies that the executive director may require more frequent reporting based on the responsible person's history of noncompliance.

#### Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules implement SB 912, which amended the TWC to allow individuals to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government.

Currently, all accidental discharges or spills of treated or untreated wastewater are required to be reported to the TCEQ within 24 hours verbally and by written report within five days. SB 912 language allows for the responsible person of a wastewater treatment facility or collection system owned or operated by a local government to report accidental discharges or spills of treated or untreated wastewater on a monthly basis in the form of a summary if certain conditions are met. The conditions are: 1) the spill volume is 1,000 gallons or less; 2) it is not associated with another accidental discharge or spill; 3) it is controlled or removed before entering water in the state; 4) it does not adversely affect a public or private source of drinking water; 5) it will not endanger human health or safety or the environment; and 6) it is not otherwise subject to local regulatory control and reporting requirements.

There are an estimated 5,147 local governments that may be affected by the proposed rules. A noncompliance form is used to notify the agency of a discharge or spill. The noncompliance form is submitted to the agency by hard copy and by email. The proposed language will allow a responsible person to report certain accidental discharges or spills of treated or untreated wastewater on a monthly basis from wastewater treatment facilities or collection systems owned or operated by a local government. If a local government has numerous spills of treated or untreated wastewater to report, there may be minor cost savings from the consolidation of notifications. Otherwise, no significant fiscal implications are anticipated for local governments that own or operate wastewater treatment facilities or collection systems as a result of the administration or enforcement of the proposed rules.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the only public benefit anticipated from the changes seen in the proposed rules will be consistency with state law.

The proposed rules are not anticipated to result in fiscal implications for businesses or individuals. The exception to 24-hour verbal and five-day written reporting of accidental discharges or spills of treated or untreated wastewater only applies to wastewater treatment facilities or collection systems owned or operated by a local government.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect for small or micro-businesses. The proposed rules will only apply to a wastewater treatment facility or collection system owned or operated by a local government.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect and are necessary to comply with state law.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it revises procedural rules regarding when and how specific accidental discharges or spills of treated or untreated wastewater are to be reported. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912.

The proposed rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these

four applicability requirements of a "major environmental rule." Specifically, the proposed rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated or untreated wastewater and is procedural in nature. The primary purpose of the proposed rulemaking is to implement changes made to the TWC in SB 912. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this preamble.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking revises procedural rules regarding when and how to report certain accidental discharges and spills of treated and untreated wastewater. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

#### Consistency with the Coastal Management Program

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies. Therefore, the proposed rules are not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on March 1, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087

or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-024-305-CE. The comment period closes on March 7, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at [http://www.tceq.texas.gov/rules/propose\\_adopt.html](http://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Macy Beauchamp, Program Support Section, (512) 239-0437.

#### Statutory Authority

The amendment and new section are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §26.039, concerning Accidental Discharges and Spills and TWC, §26.121, concerning Unauthorized Discharges Prohibited, which prohibits unauthorized discharges into or adjacent to water in the state.

The proposed amendment and new section implement TWC, §26.039, and Senate Bill 912 (84th Texas Legislature, 2015).

#### §327.1. *Applicability.*

(a) This chapter applies to discharges or spills that result in a release to the environment within the territorial limits of the State of Texas, including the coastal waters of this state.

(b) This chapter does not apply to:

(1) discharges or spills of oil that enter or threaten to enter coastal waters of the State. Except for spills of oil of 240 barrels or less for which the Railroad Commission of Texas is the on-scene coordinator, such discharges or spills are regulated by the Texas General Land Office under the Oil Spill Prevention and Response Act of 1991, the Texas Natural Resources Code, Chapter 40, Subchapters C, D, E, F, and G;

(2) spills or discharges from activities subject to the jurisdiction of the Railroad Commission of Texas under the Texas Water Code, §26.131;

(3) releases only to air;

(4) the lawful placement of waste or accidental discharge of material into a solid waste management unit registered or permitted under Chapter 335, Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General);

(5) units and activities regulated under the authority of the Texas Water Code, Chapter 26, Subchapter I (Underground and Above-ground Storage Tanks);

(6) the lawful application of materials, including but not limited to fertilizers and pesticides, to land or water;

(7) discharges that are authorized by a permit, order, or rule issued under federal law or any other law of the State of Texas; provided, however, that unauthorized discharges [~~not so authorized~~] shall be reported under this chapter unless the permit, order, or another commission rule provides an applicable reporting requirement;

(8) discharges or spills that are continuous and stable in nature, and are reported to the United States Environmental Protection Agency [(EPA)] under 40 Code of Federal Regulations [(CFR)] §302.8; [and]

(9) discharges or spills occurring during the normal course of rail transportation; or[-]

(10) accidental discharges or spills of treated or untreated wastewater that are reported in accordance with §305.132 of this title (relating to Special Conditions for Certain Wastewater Discharges).

§327.32. Reporting Requirements for Certain Accidental Discharges or Spills of Treated or Untreated Wastewater at Wastewater Treatment Facilities or Collection Systems.

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

(1) Collection system--Pipes, conduits, lift stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport domestic wastewater to a wastewater treatment facility.

(2) History of noncompliance--History of non-reporting of accidental discharges or spills of treated or untreated wastewater.

(3) Local government--An incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52, or Article XVI, Section 59 of the Texas Constitution.

(4) Wastewater treatment facility--All contiguous land and fixtures, structures, and appurtenances used for storing, processing, and treating wastewater. A wastewater treatment facility does not include the collection system located outside of the fenced area.

(b) Except as provided by subsection (c) of this section, all accidental discharges or spills of treated or untreated wastewater shall be reported within 24 hours of the occurrence. A written submission shall be provided to the executive director within five days of the occurrence. The written submission shall contain a description of the accidental discharge or spill and its cause; the potential danger to human health or safety, or the environment; the duration of the accidental discharge or spill, including exact dates and times; if the cause of the accidental discharge or spill has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence, and to mitigate its adverse effects.

(c) The responsible person of a wastewater treatment facility or collection system that is owned or operated by a local government may report accidental discharges or spills of treated or untreated wastewater that do not endanger human health or safety or the environment to the executive director as a monthly summary if each individual accidental discharge or spill:

(1) has a volume of 1,000 gallons or less;

(2) is not associated with another simultaneous accidental discharge or spill of treated or untreated wastewater;

(3) is controlled or removed before the accidental discharge or spill enters water in the state or adversely affects a public or private source of drinking water; and

(4) is not otherwise subject to local regulatory control and reporting requirements.

(d) The responsible person shall submit a monthly summary by the 20th day of the month for each accidental discharge or spill that occurred during the previous month. The summary must include, at a minimum, the:

(1) location, volume and content of the accidental discharge or spill;

(2) description of the accidental discharge or spill;

(3) cause of the accidental discharge or spill;

(4) exact dates and times of the accidental discharge or spill; and

(5) steps taken to reduce, eliminate, and prevent recurrence of the accidental discharge or spill.

(e) The responsible person must use one of the following methods for determining the volume of the discharge or spill.

(1) Visual estimate. If the accidental discharge or spill is less than 50 gallons, using a standard five-gallon bucket for reference, estimate the number of buckets that the discharge or spill would fill then multiply by five to obtain the number of gallons discharged or spilled. If the accidental discharge or spill is larger than 50 gallons, using a standard 50-gallon barrel for reference, estimate the number of barrels that the discharge or spill would fill and then multiply by 50 to obtain the number of gallons discharged or spilled.

(2) Measured volume. Identify the length, width, and depth of the contained accidental discharge or spill in feet and calculate the volume by multiplying length by width by depth by 7.5 (the conversion factor from cubic feet to gallons).

(3) Duration and flow rate. Identify separate estimates for the duration and the flow rate of the accidental discharge or spill. The estimated volume is calculated by multiplying the duration (hours or days) by the flow rate (gallons/hour or gallons/day).

(f) The responsible person must keep records of all accidental discharges or spills of treated or untreated wastewater reported under this section. The records must remain on-site for three years and be made immediately available to commission staff upon request.

(g) The executive director may require more frequent reporting based on the responsible person's history of noncompliance.

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 January 22, 2016.

TRD-201600279

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 239-2613

◆ ◆ ◆  
**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 10. TEXAS WATER DEVELOPMENT BOARD**

**CHAPTER 356. GROUNDWATER MANAGEMENT**

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) Chapter 356, relating to Groundwater Management, §356.10, relating to Definitions; §356.21, relating to Designation of Groundwater Management Areas; §356.22, relating to Request to Amend Groundwater Management Area Boundaries; §356.34, relating to District Adoption of the Desired Future Conditions; §356.35, relating to Modeled Available Groundwater; and §356.53, relating to Plan Submission. The TWDB also proposes new §356.41, relating to Petition: Required Administrative Review and Scientific Study, and new §356.42, regarding Petition: Mediation of Issues.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSAL.

The TWDB is proposing this rulemaking in order to clarify procedures related to amending the boundaries of groundwater management areas, and to conform to changes in statute due to passage of House Bill (HB) 200 by the 84th Texas Legislature in 2015.

#### Amending Boundaries of Groundwater Management Areas.

In accordance with 31 TAC §356.22(b)(2), authorization is required from the TWDB to proceed with rulemaking for a boundary change involving a substantive change to the physical groundwater management area boundary. Originally, TWDB maintained the groundwater management area boundary designations in certain internal data files. The titles of these data files were included in TWDB rules relating to groundwater management area designations. Because of this, the TWDB was required to authorize a rulemaking every time it amended groundwater management area boundaries. However, the titles of the data files are no longer listed in TWDB rules. Therefore, a rulemaking to reflect a substantive change to groundwater management area boundaries is no longer needed.

The proposed amendment to 31 TAC §356.22(b)(2) reflects the changes in TWDB practice for amending groundwater management area boundaries by removing the required rulemaking. Each groundwater management area requesting a change to its boundaries must continue to hold a public meeting on the issue and submit the notice and minutes of that meeting to TWDB with its request. Furthermore, 31 TAC §356.22(b)(2) would still require TWDB approval at a public board meeting for substantive changes. Therefore, a thorough notice and comment process will still be involved for amending groundwater management area boundaries even if the process no longer includes a rulemaking by TWDB.

#### Changes to Process to Consider Desired Future Conditions Petitions.

HB 200 amended various sections of Chapter 36 of the Texas Water Code to revise the procedures for the appeal of a desired future condition adopted by a Groundwater Conservation District (District). The proposed rules reflect the change in statute that removes TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the State Office of Administrative Hearings (SOAH) to hear the challenge. An affected person has to file a petition with the District within 120 days of the District's adoption of the desired future condition. Within 60 days of receiving a petition, a District is required to contract with SOAH to conduct the contested case hearing and submit any related petitions. Within 10 days of receiving the petition, the District is to submit a copy of the petition to the TWDB so it can conduct an administrative review of the desired future condition and a scien-

tific and technical analysis. TWDB has 120 days to deliver the scientific and technical analysis to SOAH. TWDB staff responsible for the scientific and technical analysis may be called to testify as expert witnesses.

A District can also seek the assistance of the TWDB to mediate the issues raised in the petition. If the issues cannot be resolved, SOAH is to proceed with the hearing.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

##### Section 356.10. Definitions.

The definition of "Affected Person" is added to define the term as used in Chapter 36 of the Texas Water Code.

The definition of "Evidence" is deleted because it is unnecessary and is no longer applicable.

The definition of "Office" is added to define the term as used in Chapter 36 of the Texas Water Code.

The definition of "Person with a legally defined interest in groundwater" is deleted because it is unnecessary and is no longer applicable.

The definition of "Petition" is revised for consistency with Chapter 36 of the Texas Water Code.

The definition of "Petitioner" has been deleted because it is unnecessary and is no longer applicable.

The definition of "Relevant aquifer" has been moved within this Definitions section and renumbered.

Definitions have been renumbered accordingly.

##### Section 356.21. Designation of Groundwater Management Areas.

Section 356.21 is revised for consistency with current agency practice related to data and map files.

##### Section 356.22. Request to Amend Groundwater Management Area Boundaries.

Section 356.22 is revised for consistency with current agency practice related to amending groundwater management area boundaries.

##### Section 356.34. District Adoption of the Desired Future Condition.

Section 356.34 is revised for consistency with agency practice and rules related to the submission of a desired future condition package.

##### Section 356.35. Modeled Available Groundwater.

Section 356.35 is revised to require the TWDB to provide the modeled available groundwater value no later than 180 days after the executive administrator has provided notice that the desired future condition package submitted is administratively complete.

##### Section 356.41. Petition: Required Administrative Review and Scientific and Technical Study.

Existing §356.41 (relating to Petition: Required Administrative Review and Scientific and Technical Study) is being proposed for repeal elsewhere in this issue of the *Texas Register*. New proposed §356.41 details the procedures for the appeal of a desired future condition adopted by a groundwater conservation district, consistent with Chapter 36 of the Texas Water Code as amended

by HB 200, 84th Legislative Session. This proposal reflects the change in statute that removes TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a groundwater conservation district to contract with the SOAH to hear the challenge. The proposed rulemaking requires the TWDB to conduct an administrative review of the desired future condition and a scientific and technical analysis.

Section 356.42. Petition: Mediation of Issues.

Existing §356.42 (relating to Hearing) is proposed for repeal elsewhere in this issue of the *Texas Register*. New proposed §356.42 allows a groundwater conservation district to request the TWDB's assistance in mediating the issues raised in the petition, consistent with Chapter 36 of the Texas Water Code as amended by HB 200, 84th Legislative Session. If the issues cannot be resolved, SOAH is to proceed with the hearing.

Section 356.53. Plan Submission.

Section 356.53 is revised to correct a term.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed amendments and new rules. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments.

There is no change in costs because there are no direct costs associated with the proposed rules. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering the rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rules.

#### PUBLIC BENEFITS AND COSTS

Ms. Demers also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it provides clarity regarding the TWDB's process for changing groundwater management area boundaries and it is consistent with statutory changes made to the process involving desired future conditions.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The TWDB has determined that a local employment impact statement is not required because the proposed amendments and new rules will not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these proposed rules. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rules as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same.

Even if the proposed rulemaking were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather Chapter 36 of the Texas Water Code. Therefore, these proposed rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The TWDB evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed amendments and new rules is to provide clarity regarding the TWDB's process for changing groundwater management area boundaries and to more closely align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. The proposed rules would substantially advance this stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 36 of the Texas Water Code, which is exempt under Texas Government Code §2007.003(b)(4).

Nevertheless, the TWDB further evaluated these proposed rules and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this proposed rulemaking provides clarity regarding the TWDB's process for changing groundwater management area boundaries and more closely aligns the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. This will not burden, restrict, or limit an owner's right to property. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMISSION OF COMMENTS

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax at (512) 475-2053.

### SUBCHAPTER A. DEFINITIONS

#### 31 TAC §356.10

##### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

##### §356.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 36, Groundwater Conservation Districts, that are not defined here shall have the meanings provided in Chapter 36.

(1) Affected Person--An owner of land in the management area, a district in or adjacent to the management area, a regional water planning group with a water management strategy in the management area, a person who holds or is applying for a permit from a district in the management area, a person who has groundwater rights in the management area, or any other person defined as affected with respect to a management area by Texas Commission on Environmental Quality rule.

(2) [(4)] Agency--The Texas Water Development Board.

(3) [(2)] Amount of groundwater being used on an annual basis--An estimate of the quantity of groundwater annually withdrawn or flowing from wells in an aquifer for at least the most recent five years that information is available. It may include an estimate of exempt uses.

(4) [(3)] Board--The governing body of the Texas Water Development Board.

(5) [(4)] Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteris-

tics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.

(6) [(5)] Conjunctive surface management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.

(7) [(6)] Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a management area at one or more specified future times as defined by participating groundwater conservation districts within a groundwater management area as part of the joint planning process.

(8) [(7)] District--Any district or authority subject to Chapter 36, Texas Water Code.

[(8) Evidence--Information, including but not limited to oral statements or presentations, written materials, data files, or graphic representations, which relates to the reasonableness of the desired future conditions.]

(9) - (15) (No change.)

(16) Office--State Office of Administrative Hearings.  
[Relevant aquifer--An aquifer designated as a major or minor aquifer.]

[(17) Person with a legally defined interest in groundwater--A person or entity that owns or leases land or rights to groundwater in a groundwater management area; uses a well for beneficial use in a groundwater management area; or has current or pending authorization from a district to produce groundwater.]

(17) [(18)] Petition--A document submitted to the groundwater conservation district by an affected person [executive administrator] appealing the reasonableness [adoption] of a desired future condition [that complies with the requirements of §356.41(b) of this chapter (relating to Petition: Reviewability, Form, Receipt, Postponement, and Joinder)].

[(19) Petitioner--A person with a legally defined interest in groundwater, a district in or adjacent to the groundwater management area, or a regional water planning group for a region in the groundwater management area who appeals the adoption of a desired future condition.]

(18) [(20)] Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.

(19) [(21)] Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

(20) Relevant aquifer--An aquifer designated as a major or minor aquifer.

(21) [(22)] State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

(22) [(23)] Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district.

(23) [(24)] Total Estimated Recoverable Storage--The estimated amount of groundwater within an aquifer that accounts for re-

covery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

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 January 25, 2016.

TRD-201600296

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 463-8061



## SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

### 31 TAC §356.21, §356.22

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

#### §356.21. *Designation of Groundwater Management Areas.*

The boundaries of the groundwater management areas are delineated using a geographic information system maintained and updated by the executive administrator. The digital files and a graphic representation of the groundwater management area boundaries are available [~~on a CD-ROM located in agency offices and~~] on the agency's web site at <http://www.twdb.texas.gov>. The graphic representation includes groundwater management area boundaries superimposed on a map that includes Texas county lines and may be used for creating graphic representations of the groundwater management area boundaries and other associated geographic features. These files are controlling in the event of a conflict with any graphic representation.

#### §356.22. *Request to Amend Groundwater Management Area Boundaries.*

(a) (No change.)

(b) The executive administrator will review the request and will notify the districts of his decision.

(1) If the proposed change involves only an administrative adjustment or correction to the boundary data files identified in §356.21 of this subchapter (relating to Designation of Groundwater Management Areas), the executive administrator will instruct agency staff to make the change and notify the districts upon completing the change.

(2) If the proposed change involves a substantive change to the boundaries of one or more groundwater management areas, the request will be presented to the board for authorization [~~to proceed with rulemaking~~].

(c) - (d) (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 January 25, 2016.

TRD-201600299

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 463-8061



## SUBCHAPTER C. SUBMISSION OF DESIRED FUTURE CONDITIONS

### 31 TAC §356.34, §356.35

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

#### §356.34. *District Adoption of the Desired Future Condition.*

Each district shall adopt the desired future condition for the aquifer(s) within its boundaries as soon as possible after the executive administrator advises that the desired future condition package submitted pursuant to §356.32 of this subchapter (relating to Submission Package) is administratively complete.

#### §356.35. *Modeled Available Groundwater.*

~~{(a)}~~ The executive administrator will provide the modeled available groundwater value for each aquifer with a desired future condition to districts in a groundwater management area and the appropriate regional water planning groups no later than 180 days after the executive administrator has provided notice that the submitted package is administratively complete as described in §356.33 of this subchapter (relating to Determination of Administrative Completeness). ~~[The modeled available groundwater value will be provided:]~~

~~{(1)}~~ No later than 180 days after the executive administrator has provided notice that the submitted package is administratively complete as described in §356.32 of this subchapter (relating to Submission Package); ~~or~~

~~{(2)}~~ No later than 180 days after the date on which the board determines that an appeal under Subchapter D of this chapter (relating to Appealing Adoption of Desired Future Conditions) is resolved.]

~~{(b)}~~ An appeal of a desired future condition will be considered resolved when:]

~~{(1)}~~ The board determines that the desired future condition is reasonable; ~~or~~

~~{(2)}~~ When districts in the groundwater management area submit a revised desired future condition(s) to the board.]

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

Filed with the Office of the Secretary of State on January 25, 2016.

TRD-201600301

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 463-8061



## SUBCHAPTER D. APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

### 31 TAC §356.41, §356.42

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

#### §356.41. Petition: Required Administrative Review and Scientific and Technical Study.

(a) The agency will perform an administrative review of the desired future condition established by the district to determine if the desired future condition meets the criteria in Texas Water Code §36.108(d) when a petition received by a district is submitted to the executive administrator in accordance with Texas Water Code §36.1083(e).

(b) The agency will complete and deliver to the Office a scientific and technical analysis of the desired future condition considering the criteria listed in Texas Water Code §36.1083(e)(2) within 120 days after receiving a copy of the petition from the district. The scientific and technical analysis of the desired future condition will be conducted according to the guidance published on the agency website.

#### §356.42. Petition: Mediation of Issues.

(a) In accordance with Texas Water Code §36.1083(j), a district may seek assistance of the agency in mediating the issues raised in the petition.

(b) If the agency's assistance is sought by the district, the executive administrator or his designee shall hold at least one meeting with the district and the affected person and shall establish procedures to mediate the issues raised in the petition.

(c) Depending on the details of the petition, the executive administrator may contract with an independent mediator to be paid for by the district.

(d) The executive administrator will notify the Office if the petition issues are resolved or not resolved as a result of mediation.

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 January 25, 2016.

TRD-201600302

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 463-8061



## SUBCHAPTER E. GROUNDWATER MANAGEMENT PLAN APPROVAL

### 31 TAC §356.53

#### STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed rulemaking affects Chapter 36 of the Texas Water Code.

#### *§356.53. Plan Submission.*

(a) A district requesting approval of its management plan, or of an update of its management plan to incorporate adopted desired future conditions that apply to the district, shall submit to the executive administrator the following:

- (1) one hard copy of the adopted management plan;
  - (2) one electronic copy of the adopted management plan;
- and

(3) documentation [evidence] that the plan was adopted after notice posted in accordance with Texas Government Code Chapter 551, including a copy of the posted agenda, meeting minutes, and copies of the notice printed in the newspaper or publisher's affidavit.

(b) (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 January 25, 2016.

TRD-201600303

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 463-8061



## SUBCHAPTER D. APPEALING ADOPTION OF DESIRED FUTURE CONDITIONS

### 31 TAC §§356.41 - 356.46

The Texas Water Development Board (TWDB) proposes the repeal of 31 Texas Administrative Code (TAC) Chapter 356, §§356.41 - 356.46.

#### BACKGROUND AND BASIS FOR THE PROPOSED REPEALS.

The TWDB is proposing these repeals in order to clarify procedures related to amending the boundaries of groundwater management areas, and to conform to changes in statute due to passage of House Bill (HB) 200 by the 84th Texas Legislature in 2015. Changes to existing rules and proposed new rules to conform to the HB 200 amendments are being proposed simultaneously elsewhere in this issue of the *Texas Register*.

HB 200 amended various sections of Chapter 36 of the Texas Water Code to revise the procedures for the appeal of a desired future condition adopted by a Groundwater Conservation District (District). The rules proposed for repeal reflect the change in statute that removes the TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the State Office of Administrative Hearings (SOAH) to hear the challenge.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeals. For the first five years this rule is in effect, there is no expected additional cost to state or local governments resulting from their repeal.

The repeal of these sections is not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed repeals. These repeals are not expected to have any impact on state or local revenues nor do they require any increase in expenditures for state or local governments as a result of administering the repeals. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the repeals.

#### PUBLIC BENEFITS AND COSTS.

Ms. Demers also has determined that for each year of the first five years the proposed repeals are in effect, the public will benefit as it is consistent with statutory changes which remove the TWDB's reasonableness petition process for desired future conditions and instead allows an affected person to petition a District to contract with the SOAH to hear the challenge.

#### LOCAL EMPLOYMENT IMPACT STATEMENT.

The TWDB has determined that a local employment impact statement is not required because the proposed repeals will not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed repeals. The TWDB also has determined that there is no anticipated economic cost to persons because there are no requirements imposed by the repeal. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION.

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject

to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed repeals is to conform the TWDB's rules related to desired future conditions to the Texas Water Code related to the same.

Even if the proposed rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather Chapter 36 of the Texas Water Code. Therefore, the proposed repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT.

The TWDB evaluated the proposed rules and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed repeals are to conform the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. The proposed repeals substantially advance this stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 36 of the Texas Water Code, which is exempt under Texas Government Code §2007.003(b)(4).

Nevertheless, the TWDB further evaluated this proposed rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of the proposed repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed repeals do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would other-

wise exist in the absence of the regulation. In other words, the proposed repeals align the TWDB's rules related to desired future conditions to the Texas Water Code related to the same. This will not burden, restrict, or limit an owner's right to property. Therefore, the proposed repeals do not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMISSION OF COMMENTS.

Comments on the proposed repeals will be accepted for 30 days following publication in the *Texas Register* and may be submitted by mail to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053.

#### STATUTORY AUTHORITY.

The repeals are proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to propose rules necessary to carry out the powers and duties of the TWDB. The repeals are also proposed under the authority of Chapter 36 of the Texas Water Code.

The proposed repeals affect Chapter 36 of the Texas Water Code.

§356.41. *Petition: Reviewability, Form, Receipt, Postponement, and Joinder.*

§356.42. *Hearing.*

§356.43. *Board Evaluation, Consideration, and Deliberation.*

§356.44. *Board Findings and Public Hearing on Recommended Revisions.*

§356.45. *Waiver.*

§356.46. *Administrative Record of the Proceedings.*

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 January 25, 2016.

TRD-201600295

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 463-8061



## CHAPTER 358. STATE WATER PLANNING GUIDELINES

### SUBCHAPTER B. DATA COLLECTION

#### 31 TAC §358.6

The Texas Water Development Board (TWDB) proposes amendments to Chapter 358, State Water Planning Guidelines, §358.6, relating to Water Loss Audits.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

In 2013, the 83rd Texas Legislature passed House Bill (HB) 3605 amending Texas Water Code §16.0121 regarding the water loss

audit that is required of all retail public utilities providing potable water. HB 3605 required a retail public utility providing potable water that receives financial assistance from the TWDB to use a portion of that, or any additional, financial assistance to mitigate the utility's system water loss if the utility's system water loss met or exceeded a threshold established by agency rule.

In late 2014, the TWDB adopted 31 TAC §358.6 (relating to Water Loss Audits), which establishes water loss thresholds for retail public utilities providing potable water that apply for financial assistance from the TWDB. The thresholds were developed based on industry performance indicators for both apparent loss (including meter inaccuracies, billing adjustments, and theft) and for real loss (actual loss of water from leaks and breaks and also loss from unknown and unreported sources).

In 2015, the 84th Texas Legislature passed HB 949, amending §16.0121(g) of the Water Code allowing the TWDB, on the request of a retail public utility, to waive the requirement that the utility use the financial assistance to mitigate water loss if the TWDB finds that the utility is satisfactorily addressing its water loss.

The proposed amendment to be applied to 31 TAC §358.6(f) would require a utility that is identified as meeting or exceeding the thresholds, and which requests a waiver, to provide the Executive Administrator with information regarding that activities or programs it has, or is planning to have, and current and or expected accomplishments for their water loss program. Also required will be the source of funding for their water loss program.

The proposed amendment would delete reference to 31 TAC §358.6(g) because it is no longer applicable.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 358.6(f) is revised for consistency with §16.0121(g) of the Texas Water Code, as amended.

Section 358.6(g) has been deleted because it is unnecessary and is no longer applicable.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed amendment. For the first five years this rule is in effect, there is no expected additional cost to state or local governments resulting from their administration.

This rule is not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed amendment. This rule is not expected to have any impact on state or local revenues. The rule does not require any increase in expenditures for state or local governments as a result of administering the rule. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from the rule.

#### PUBLIC BENEFITS AND COSTS.

Ms. Demers also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it allows flexibility when a utility has already taken steps or is presently taking steps to mitigate their water loss.

#### LOCAL EMPLOYMENT IMPACT STATEMENT.

The TWDB has determined that a local employment impact statement is not required because the proposed amendment will not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this proposed rule. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rule as proposed. Therefore, no regulatory flexibility analysis is necessary.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION.

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to more closely align the TWDB's rules related to water loss audits to the Texas Water Code related to the same.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather §16.0121 of the Texas Water Code. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### TAKINGS IMPACT ASSESSMENT.

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed amendment is to more closely align the TWDB's rules related to water loss audits to the Texas Water Code related to the same. The proposed rule would substantially advance this

stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 16 of the Texas Water Code, which is exempt under Texas Government Code §2007.003(b) (4). The TWDB is an agency that must coordinate the submission of the required water loss audit, and must compile information included in the water loss audit and determine the utility's use of financial assistance from the TWDB to mitigate system water loss in accordance with §16.0121 of the Texas Water Code.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with the submission of a water loss as required by state law unless a waiver is appropriately requested by a retail public utility. This will not burden, restrict, or limit an owner's right to property. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

#### SUBMISSION OF COMMENTS.

Comments on the proposed rulemaking will be accepted for 30 days following publication in the *Texas Register* and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov) or by fax at (512) 475-2053.

#### STATUTORY AUTHORITY.

This rulemaking is proposed under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB. The rulemaking is also proposed under the authority of Texas Water Code §16.0121, which authorizes the TWDB to waive the water loss mitigation requirements under specified conditions.

The proposed rulemaking affects §16.0121 of the Texas Water Code.

#### §358.6. *Water Loss Audits.*

(a) - (e) (No change.)

(f) If a retail public utility's total water loss meets or exceeds the threshold for that utility, the retail public utility must use a portion of any financial assistance received from the board for a water supply project to mitigate the utility's water loss. Mitigation will be in a manner determined by the retail public utility and the executive administrator in conjunction with the project proposed by the utility and funded by the board. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily mitigating the utility's system water loss. The request for waiver should be addressed to the executive administrator and include information about the utility's current or planned activities to mitigate their water loss and their source of funding for that mitigation.

[(g) Subsection (f) of this section shall apply to applications for financial assistance received by the board after January 1, 2015.]

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 January 25, 2016.

TRD-201600304

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 463-8061



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER S. MOTOR FUEL TAX

###### 34 TAC §3.432

The Comptroller of Public Accounts proposes amendments to §3.432, concerning refunds on gasoline, diesel fuel, compressed natural gas, and liquefied natural gas taxes. The amendments are proposed to implement the provisions of Senate Bill 254, 81st Legislature, 2009, effective July 1, 2009, House Bill 2148, 83rd Legislature, 2013, effective September 1, 2013, and House Bill 1905, 84th Legislature, 2015, effective September 1, 2015.

Subsection (h)(1)(E) is amended to add the definition of a volunteer fire department to provide clarity for refund purposes because of statutory exemptions provided in Senate Bill 254 and House Bill 2148.

Subparagraph (F) is added to include an exemption for non-profit entities providing emergency medical services as provided in House Bill 1905.

Paragraph (2) is amended to reflect the inclusion of new subparagraph (F).

Paragraph (3) is reformatted to reflect the expansion of an exemption to include a Texas municipality and a transit company, including a metropolitan rapid transit authority, as provided in House Bill 1905.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §§162.104 (Exemption for Gasoline), 162.125 (Gasoline Refund or Credit for Certain Taxes Paid), 162.204 (Diesel Fuel Exemptions), 162.227 (Diesel Fuel Refund for Certain Taxes Paid), 162.356 (Compressed Natural Gas and Liquefied Natural Gas Exemptions), and 162.365 (Compressed Natural Gas and Liquefied Natural Gas Exemption).

§3.432. *Refunds on Gasoline, Diesel Fuel, Compressed Natural Gas, and Liquefied Natural Gas Taxes.*

(a) Refunds and credits. A person may file a claim for refund or a license holder may take a credit on a return for state fuel tax paid on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas used off the highway, for certain resale, for export from Texas, for loss caused by fire, theft, or accident, or other use if authorized by law. The claim for refund or credit must be filed in accordance with this section.

(b) Time limitation. A claim for refund or credit must be filed before the expiration of the following time limitations, as provided by Tax Code, §§162.128, 162.230, and 162.369:

(1) one year from the first day of the calendar month that follows:

- (A) purchase;
- (B) tax exempt sale;
- (C) use, if withdrawn from one's own storage for one's own use;
- (D) export from Texas; or
- (E) loss by fire, theft, or accident; or

(2) four years from the due and payable date for a tax return on which an overpayment of state fuel tax was made by a licensed supplier, permissive supplier, distributor, importer, exporter, blender, or compressed natural gas and liquefied natural gas dealer who determines that taxes were erroneously reported or that more taxes were paid than were due because of a mistake of fact or law. The licensed supplier, permissive supplier, distributor, importer, exporter, blender, or compressed natural gas and liquefied natural gas dealer must establish the credit by filing an amended state fuel tax return for the period in which the error occurred and tax payment was made to the comptroller.

(c) Filing forms and documentation. A claim for refund or credit must be on a form prescribed by the comptroller and must be submitted within the applicable limitations period provided by subsection (b) of this section. A person or license holder is required to maintain and have available for inspection the following documentation and information to substantiate a claim for refund or credit:

(1) an original purchase invoice with the name and address of the seller or name of the purchaser, whichever is applicable. For refund or credit purposes, the original invoice may be a copy of the original impression if the copy has been stamped "Customer Original Invoice," "Original for Tax Purposes," or similar wording. If a copy is so stamped, the original and all other copies must then be stamped

"Not Good for Tax Purposes" or similar wording. Invoices of original impression submitted in support of refund claims must be without the above wording stamped or imprinted;

(2) evidence as to who paid the tax. A purchaser claiming a refund or credit must have an invoice that either separately states the state fuel tax amount paid or a written statement that the price included state fuel tax. A seller claiming a refund or credit must have issued an invoice, signed by the purchaser, that contains a statement that no state fuel tax was collected or that it was a tax-free sale;

(3) if refund or credit is claimed on fuel purchased at retail the purchase invoice must note the identification of each vehicle or type of equipment (e.g., including railway engines, motor boats, refrigeration units, stationary engines, off-highway equipment, or nonhighway farm equipment that has traveled between multiple farms or ranches as allowed in §3.440 of this title (relating to On-Highway Travel of Farm Machinery)) in which the fuel was delivered and used; and

(4) if refund or credit is claimed on fuel removed from the claimant's own bulk storage, then a distribution log as provided by Tax Code, §162.127 and §162.229. The distribution log must contain the name and address of the user and, for each individual removal from the bulk storage the following information:

- (A) the date the fuel was removed;
- (B) the number of gallons removed;
- (C) the type of fuel removed;
- (D) the identity of the person removing the fuel; and

(E) the type or description of the off-highway equipment into which the fuel was delivered, or the identification of both on-highway and off-highway motor vehicles into which the fuel was delivered, including the state highway license number or vehicle identification number and odometer or hubometer reading, or description of other off-highway use.

(d) Refund or credit for state fuel tax on gasoline used solely for off-highway purposes. A claim for refund or credit for state fuel tax on gasoline used solely for off-highway purposes must list each off-highway vehicle or piece of equipment or document other nonhighway use and the total number of gallons used by way of a distribution log as described in subsection (c)(4) of this section.

(e) Refund or credit for state fuel tax on gasoline used by a lessor of off-highway equipment. The lessor of off-highway equipment who claims a refund or credit of state fuel tax must maintain documentation that shows that the state fuel tax was assessed and paid, a list of each piece of off-highway equipment, and a distribution log as described in subsection (c)(4) of this section of the number of gallons of gasoline used in both on-highway and off-highway vehicles and equipment. A lessor who claims a refund of state fuel tax may include a separate refueling, fuel reimbursement, or fuel service charge on the invoice, if the invoice contains a statement that the fuel charge does not include state fuel tax.

(f) Refund or credit for state fuel tax on gasoline, compressed natural gas, or liquefied natural gas used in a motor vehicle operated exclusively off-highway, except for incidental highway use. A claim for refund or credit may be filed by a person who used gasoline, compressed natural gas, or liquefied natural gas in motor vehicles incidentally on the highway, when the incidental travel on the highway was infrequent, unscheduled, and insignificant to the total operation of the motor vehicle, and only for the purpose of transferring the base of operation or to travel to and from required maintenance and repair.

(1) A record that shows the date and miles traveled during each highway trip must be maintained.

(2) 1/4 gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(g) Refund or credit for state fuel tax on gasoline used in gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. A person who files a claim for refund or a license holder who takes a credit on a tax return for state fuel tax on gasoline used in the operation of power take-off or auxiliary power units must use one of the following methods in determining the amount of gasoline used:

(1) direct measurement method. The use of a metering device, as defined by §3.435 of this title (relating to Metering Devices Used to Claim Refund of Tax on Gasoline Used in Power Take-Off and Auxiliary Power Units) is an acceptable method for determination of fuel usage. A person who claims a refund or credit for state fuel tax on gasoline used to propel motor vehicles with approved measuring or metering devices that measure or meter the fuel used in stationary operations must maintain records on each vehicle so equipped, and the records must reflect:

- (A) the miles driven as shown by any type of odometer or hubometer;
- (B) the gallons delivered to each vehicle; and
- (C) the gallons used as recorded by the meter or other measuring device;

(2) fixed 30% method for gasoline-powered ready mix concrete trucks and solid waste refuse trucks. Operators of gasoline-powered ready mix concrete trucks and solid waste refuse trucks that are equipped with power take-off or auxiliary power units that are mounted on the motor vehicle and use the fuel supply tank of the motor vehicle may claim refund on 30% of the total gasoline used in this state by each vehicle. A solid waste refuse truck means a motor vehicle equipped with a power take-off or auxiliary power unit that provides power to compact the refuse, open the back of the container before ejection, and eject the compacted refuse;

(3) mileage factor method. The nontaxable use may be determined by computing the taxable use at 1/4 gallon for each mile traveled, as recorded by the odometer or hubometer and subtracting that amount from the total quantity of gasoline delivered into the motor vehicle fuel supply tanks. The remainder will be considered nontaxable, and a tax refund or tax credit may be claimed on that quantity of fuel;

(4) two tank method. A motor vehicle may be equipped with two fuel tanks and an automatic switching device that a spring-activated air release parking brake operates, and that switches from one tank that is designated for highway use to another tank that is not so designated when the vehicle is stationary. The highway tank and the not-for-highway tank may not be connected by crossover line or equalizer line of any kind. The state fuel tax paid on the gasoline delivered to the tank designated not-for-highway use may be claimed as a tax refund or taken as a tax credit. All gasoline delivered into the fuel supply tanks of a vehicle that is equipped with an automatic switching device must be invoiced as taxable. Separate invoices must be issued for deliveries of fuel into each tank. A notation that indicates that fuel was delivered into the tank designated not-for-highway use must be made on invoices;

(5) fixed 5.0% method. In lieu of the use of one of the previously mentioned methods, the owner or operator of a gasoline-powered motor vehicle that is equipped with a power take-off or auxiliary power unit that is mounted on the vehicle may claim a credit or refund

of the state fuel tax paid on 5.0% of the total taxable gasoline used in this state by each vehicle so equipped; or

(6) proposed alternate methods. Proposals for the use of methods that this section does not specifically cover to determine the amount of gasoline used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval; and

(7) accurate mileage records must be kept regardless of the method used.

(h) Refund or credit for state fuel tax on gasoline or diesel fuel sold to or used by an exempt entity.

(1) A license holder, other than an aviation fuel dealer, may take a credit on a return for state fuel tax paid on the purchase of gasoline or diesel fuel that is resold tax-free if the purchaser was one of the following entities:

(A) the United States or federal government and the purchase is for its exclusive use. The federal government means any department, board, bureau, agency, corporation, or commission that the United States government has created or wholly owns. Exclusive use by the federal government means use of fuel only in motor vehicles or other equipment that the federal government operates. A person operating under a contract with the federal government is not an exempt entity. Evidence that sales were made to the federal government must be maintained and consist of:

(i) a United States tax exemption certificate--Standard Form 1094 or similar certificate that includes the same information as the Standard Form 1094;

(ii) copies of the invoice(s) when a United States National credit card--Standard Form 149, was used for the purchase, which invoice must include the license plate number or official vehicle designation, if fuel is delivered into the fuel supply tank of a motor vehicle; or

(iii) a copy of a contract between the seller and the federal government supporting the sales invoices or purchase vouchers;

(B) a Texas public school district and the purchase is for its exclusive use. Exclusive use by a public school district means use of fuel only in motor vehicles or other equipment that the public school district operates;

(C) a commercial transportation company with a contract to provide public school transportation services to a Texas public school district under Education Code, §34.008, and the gasoline or diesel fuel is used exclusively to provide those services;

(D) a Texas non-profit electric cooperative organized under Utilities Code, Chapter 161, and telephone cooperative organized under Utilities Code, Chapter 162, and the purchase is for its exclusive use. Exclusive use by an electric or telephone cooperative means use of fuel only in motor vehicles or other equipment that the electric or telephone cooperative operates; [øf]

(E) a Texas volunteer fire department when the purchase is for its exclusive use. For purposes of this section, qualifying volunteer fire departments are identified on the Texas A&M Forest Service's website as a volunteer fire department having no paid members. A directory of these fire departments is available at: <http://tfsfrp.tamu.edu/fdd/directory>; or

(F) a nonprofit entity that is organized for the sole purpose of and engages exclusively in providing emergency medical services in Texas, including rescue and ambulance services, when the purchase is for its exclusive use.

(2) An exempt entity enumerated in paragraph (1)(A) - (F) [~~(E)~~] of this subsection may claim a refund of state fuel tax paid on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas purchased for its exclusive use.

(3) A [~~Texas county may claim a~~] refund may be requested for [øf] state fuels [fuel] tax [paid] on compressed natural gas or liquefied natural gas used in a motor vehicle operated exclusively by: [purchased for its exclusive use.]

(A) a Texas county or a Texas municipality; or

(B) a transit company, including a metropolitan rapid transit authority under Transportation Code, Chapter 451, or a regional transportation authority under Transportation Code, Chapter 452, that provides transportation services and who on January 1, 2015, held a prepaid liquefied gas decal as that section existed on that date.

(i) Refund or credit for state fuel tax on gasoline or diesel fuel exported from Texas or sold for export.

(1) A person may claim a refund or a licensed supplier, permissive supplier, distributor, importer, exporter, or blender may take a credit on a return for state fuel tax paid on gasoline or diesel fuel that the person or the license holder exports from this state in quantities of 100 or more gallons. Proof of export must be one of the following:

(A) proof of export that United States Customs officials have certified, if the fuel was exported to a foreign country;

(B) proof of export that a port of entry official of the state of importation has certified, if the state of importation maintains ports of entry;

(C) proof from the taxing officials of the state into which the fuel was imported that shows that the exporter has accounted for the fuel on that state's tax returns;

(D) other proof that the fuel has been reported to the state into which the gasoline or diesel fuel was imported; or

(E) a common or contract carrier's transporting documents (see §3.439 of this title (relating to Motor Fuel Transportation Documents)) that list the consignor and consignee, the points of origin and destination, the number of gallons shipped or transported, the date of export, and the kind of fuel exported.

(2) A licensed supplier, permissive supplier or distributor may take a credit on a return for state fuel tax paid on gasoline or diesel fuel resold tax-free to a licensed supplier, permissive supplier, distributor, importer, or exporter for immediate export from this state under the following circumstances:

(A) a shipping document or bill of lading issued by the seller that shows the destination state;

(B) the purchaser (exporter) is licensed in Texas as a supplier, permissive supplier, distributor, importer, or exporter; and

(C) the purchaser is licensed in the destination state to pay that state's tax; or

(D) if the destination is a foreign country, a shipping document or bill of lading issued by the seller that shows the foreign destination.

(3) A licensed supplier must collect either the destination state's tax or Texas tax from the purchaser on gasoline or diesel fuel exported to another state.

(j) Refund or credit for state fuel tax on gasoline or diesel fuel loss by fire, theft, or accident. A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on 100 or

more gallons of gasoline or diesel fuel loss by fire, theft, or accident. The claimant must maintain records of the incident that establishes that the exact quantity of fuel that has been claimed as lost was actually lost, and that the loss resulted from that incident. The time limitation prescribed in subsection (b)(1) of this section is determined by the date of the first incident of a multiple incident loss that totals 100 gallons or more. A claim for refund for loss by fire, theft, or accident shall be accompanied by fire department, police department, or regulatory agency reports as appropriate.

(1) If the incident is a drive-away theft at a retail outlet (i.e., theft occurs when a person delivers gasoline or diesel fuel into the fuel supply tank(s) of a motor vehicle at a retail outlet without payment for the fuel), the following documentation shall be maintained:

(A) a police department report or evidence that the incident of drive-away theft has been or will be taken as a deduction on the federal income tax return during the same or the subsequent reporting period; and

(B) a separate report for each incident that the employee(s) who witnessed the event prepared and signed. The report must include the date and time of occurrence, type of fuel, number of gallons, outlet location, and, if the theft is reported to a police department, the police case number.

(2) If the accidental loss was incurred through a leak in a line or storage tank, the minimum proof required is:

(A) a statement by the person who actually dug up or otherwise examined the hole or leak. Such statement should articulate the extent of the leak, the date of the examination, and the person's name and title; and

(B) a statement of the actual loss as determined by computing the measured inventory immediately preceding the discovery of the accidental leak, plus motor fuel salvaged from the leaky tank or line, if any, less intervening withdrawals for sale or use.

(3) A person claiming a refund or credit under this subsection must take inventory on the first of each month and promptly correct the inventory for any loss that has occurred in the preceding month. If inventories have not been accurately or timely measured, or if complete records have not been kept of all withdrawals for sale or use as required by law, a claim for refund or credit cannot be honored for payment.

(k) Refund or credit for state fuel tax on gasoline or diesel moved between terminals. A licensed supplier or permissive supplier may take a credit on a return for state fuel tax paid on gasoline or diesel fuel removed from an IRS registered terminal that is transferred by truck or railcar to another IRS registered terminal.

(l) Refund or credit for state fuel tax on gasoline or diesel fuel sold to or purchased by a licensed aviation fuel dealer.

(1) A licensed supplier, permissive supplier, or distributor may take a credit on a return for state fuel tax paid on gasoline or diesel fuel sold to a licensed aviation fuel dealer for delivery solely into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of a licensed aviation fuel dealer.

(2) A licensed aviation fuel dealer may claim refund for state fuel tax paid on gasoline or diesel fuel delivered into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of another licensed aviation fuel dealer.

(m) Refund or credit for state fuel tax on gasoline, diesel fuel, compressed natural gas, or liquefied natural gas used outside of Texas by a licensed interstate trucker. A licensed interstate trucker may take a credit on a tax return for state fuel tax paid on gasoline, diesel fuel,

compressed natural gas, or liquefied natural gas purchased in Texas and used outside of Texas in commercial vehicles operated under an interstate trucker license. The credit may be taken on the return for the period in which the purchase occurred. If the credit exceeds the amount of tax reported due on that return, the licensed interstate trucker:

(1) may carry forward the excess credit on any of the three successive quarterly returns until exhausted, or until the due date of the third successive quarterly return, whichever occurs first;

(2) may seek refund of the excess credit by filing a claim for refund on or before the due date of the third successive quarterly return; or

(3) if returns are filed on an annual basis an interstate trucker may seek refund or credit no later than the due date of the annual return; and

(4) any remaining credit not taken on a return or claimed as a refund before the prescribed deadline expires.

(n) Refund for state fuel tax on gasoline or diesel fuel sold on Indian reservations. A retailer located on an Indian reservation recognized by the United States government may claim refund of state fuel tax paid on gasoline or diesel fuel resold tax-free to exempt tribal entities and tribal members. The retail dealer must maintain records that include the original purchase invoices that show that the state fuel tax was paid and sales invoices that include:

(1) the name of the purchaser;

(2) the date of the sale;

(3) the number of gallons sold;

(4) the type of fuel sold; and

(5) a written statement that no state fuel tax was collected or that it was a tax-free sale.

(o) Refund of state fuel tax on compressed natural gas or liquefied natural gas sold on Indian reservations. Tribal entities and tribal members may claim a refund of state fuel tax paid on compressed natural gas or liquefied natural gas purchased from a compressed natural gas and liquefied natural gas dealer located on an Indian reservation recognized by the United States government. The refund claim must be supported with original purchase invoices that show the state fuel tax was paid and that include:

(1) the name and address of the seller;

(2) the name of the purchaser;

(3) the date of the sale;

(4) the number of diesel gallon equivalents or gasoline gallon equivalents purchased;

(5) the type of fuel purchased; and

(6) the rate and amount of tax, separately stated from the selling price.

(p) Refund or credit for state fuel tax paid on diesel fuel used in moveable specialized equipment operated exclusively in oil field well servicing.

(1) A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on diesel fuel consumed by moveable specialized equipment used exclusively in oil field well servicing equipment if the person or license holder has received or is eligible to receive a federal diesel fuel tax refund under Internal Revenue Code, Title 26, and the moveable specialized equipment meets the following specific design-base and use-base tests.

(A) Design-base test.

(i) The chassis has permanently mounted to it (by welding, bolting, riveting, or other means) machinery or equipment to perform oil well servicing operations if the operation of the machinery or equipment is unrelated to transportation on or off the highways;

(ii) the chassis has been specially designed to serve only as a mobile carriage and mount (and power source, if applicable) for the machinery or equipment, whether or not the machinery or equipment is in operation; and

(iii) the chassis could not, because of its special design, be used as part of a vehicle designed to carry any other load without substantial structural modification. A chassis that can be used for a variety of uses and body types (such as a dump truck, flat bed, or box truck) is a highway chassis and would not qualify as a specially designed chassis.

(B) Use-base test. The use-based test is satisfied if the vehicle travels less than 7,500 miles on highways during a calendar year.

(2) Documentation requirements. In addition to the documentation requirements in Tax Code, §162.229, the person or license holder must maintain:

(A) a mileage or trip log for each moveable specialized equipment on an individual-vehicle basis consisting of:

(i) total miles traveled, evidenced by odometer or hubometer readings;

(ii) date of each trip on the public highways of this state and out of this state (starting and ending);

(iii) beginning and ending odometer or hubometer readings of each trip on the public highway;

(iv) odometer or hubometer readings entering Texas, and odometer or hubometer readings leaving Texas;

(v) power unit number or vehicle identification number or license plate number; or

(vi) vehicles that are not licensed under the International Fuel Tax Agreement may use the Texas Department of Transportation Quarterly Hubometer Permit report in lieu of the records required in clauses (i) - (v) of this subparagraph to document incidental highway travel.

(B) Internal Revenue Service form 4136, if refund of federal excise tax claimed;

(C) verification that limited sales tax was paid on the movable specialized equipment, if purchased in Texas; and

(D) verification that an oversize/overweight permit is used to travel on the highways of this state.

(3) Computation of refund. One-fourth of one gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(4) Moveable specialized equipment licensed under the International Fuel Tax Agreement (IFTA). An IFTA licensee may only request a refund for state fuel tax paid on diesel fuel used in moveable specialized equipment licensed under the IFTA directly from the comptroller and separately from the IFTA tax return. A refund claim must be supported with purchase invoice(s) and trip or mileage logs described in paragraph (2) of this subsection.

(5) Recovery of refund. If a refund has been issued for movable specialized equipment for a partial calendar year, and it is determined that the movable specialized equipment traveled 7,500 miles or more on the highways in that calendar year then the taxes previously refunded for that vehicle must be repaid to the comptroller.

(q) Refund of state fuel tax paid on diesel fuel used in a medium to remove drill cuttings from a well bore in the production of oil or gas. A refund must be supported with purchase invoice(s) and distribution log described in Tax Code, §162.229.

(r) Refund of state fuel tax paid on diesel fuel used as a feedstock in manufacturing. A person may claim a refund or a license holder may take a credit on a return for state fuel tax paid on diesel fuel used as a feedstock in the manufacturing of tangible personal property for resale, but not as a motor fuel. A refund claim must be supported with purchase invoice(s), records showing the amount of diesel fuel used as feedstock and a description of the tangible personal property manufactured.

(s) The right to receive a refund or take a credit under this section is not assignable.

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 January 25, 2016.

TRD-201600297

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: March 6, 2016

For further information, please call: (512) 475-0387



## TITLE 43. TRANSPORTATION

### PART 13. HIDALGO COUNTY TAX ASSESSOR-COLLECTOR

#### CHAPTER 401. MOTOR VEHICLE TITLE SERVICES

##### 43 TAC §§401.1 - 401.13

The Hidalgo County Tax Assessor-Collector proposes new 43 TAC §§401.1 - 401.13, concerning the regulation of motor vehicle title services. The Hidalgo County Tax Assessor-Collector, Pablo (Paul) Villarreal, Jr., PCC, has linked these services to document fraud and vehicle theft. Texas Transportation Code, Chapter 520, Subchapter E regulates motor vehicle title services in counties with a population of more than 500,000. Subchapter E requires motor vehicle title services in these counties to be registered, licensed, and required to maintain records for inspection.

Mr. Villarreal has determined that for the first five-year period these sections are in effect, there will be no fiscal impact for state or local government. The amount of the fee directly relates to the amount necessary for the department to recover the cost of its operation. The county will keep all revenues from licensing fees to offset spending.

Mr. Villarreal also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcement of the rules will be to reduce vehicle theft and related document fraud.

Mr. Villarreal has received motor vehicle title services records from approximately 10-20 distinct entities per year since 2012. Nearly all of these entities are small businesses, many of which are micro-businesses. The economic costs for persons who are required to comply with these sections will be the license fee, which is due upon application and is not refundable. Small businesses that comply with the sections may experience increased business opportunities because noncompliant competitors will be sanctioned.

In preparing the proposed sections, Mr. Villarreal has considered processes which require less information from applicants, informal tracking of records, and random document confirmation. However, study and experience lead to the conclusion that public welfare and safety would benefit from clear, consistent, and published standards. Mr. Villarreal also has considered assessing lower and higher license fees but concluded that the needs of a border county like Hidalgo are different from the counties that set regulations under 43 TAC §95.1 (Harris County) and 43 TAC §301.1 (Fort Bend County).

Comments on the proposed new sections may be submitted to Mr. Santos Castilleja III, Motor Vehicle Manager, Hidalgo County Tax Office, 2804 S. US Highway 281, Edinburg, Texas 78539. The deadline for all comments is 30 days after publication in the *Texas Register*.

The Hidalgo County Tax Assessor-Collector proposes the new sections pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

This proposal does not affect any other statutes, articles, or codes.

#### §401.1. Definitions.

(a) "Motor vehicle" has the meaning assigned by Texas Transportation Code §501.002(17).

(b) "Motor vehicle title service" means any person or entity that for compensation directly or indirectly assists other persons in obtaining title documents by submitting, transmitting, or sending applications for title documents to the appropriate government agencies.

(c) "Title documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, or notifications under Chapter 683 of the Texas Transportation Code or Chapter 70 of the Texas Property Code.

(d) "Title service license holder" means a person who holds a motor vehicle title service license or a title service runner's license. A title service license holder is legally responsible for each title service runner it employs or contracts.

(e) "Title service record" means the written record for each transaction in which a motor vehicle title service receives compensation.

(f) "Title service runner" means any person employed by a licensed motor vehicle title service license holder to submit or present title documents to the county tax assessor-collector.

#### §401.2. License Requirement.

(a) A person may not act as a motor vehicle title service or act as an agent for such a business (which includes a title service runner) in Hidalgo County unless that person holds a license issued by the Hidalgo County Tax Assessor-Collector to conduct such transactions.

(b) A person commits an offense if the person violates a provision of Title 7, Subtitle A, Chapter 520, Subchapter C of the Texas Transportation Code or a rule adopted by the Hidalgo County Tax Assessor-Collector under Subchapter E, §§520.051 - 520.063 of the Texas Transportation Code. Such an offense is a Class A misdemeanor.

(c) Any unlicensed individual observed conducting motor vehicle transactions on behalf of others in Hidalgo County and who claims to be doing so without compensation shall complete an affidavit stating that the individual is not receiving compensation for the transaction. This affidavit shall be notarized and will be forwarded to the Fraud Investigations Department of the Hidalgo County Tax Assessor-Collector.

#### §401.3. License Fees.

(a) License fees must be remitted at the time a license application is submitted and are non-refundable. License fees are payable only by certified bank check or money order unless the Hidalgo County Tax Assessor-Collector agrees, in writing, to accept cash.

(b) The fee for a motor vehicle title service license shall be \$500 for the initial application and \$200 for each annual renewal.

(c) The fee for a title service runner license shall be \$100 for the initial application and \$100 for each annual renewal.

(d) The fee for replacement of a lost title service license or title runner license shall be \$20 for the first occurrence; \$20 for the second occurrence; and \$20 for each occurrence thereafter.

#### §401.4. General License Application Requirements.

(a) Applications for a title service license may be submitted Monday through Friday, from 9:00 a.m. to 4:00 p.m., at the Hidalgo County Tax Office located at 2804 S. US HWY 281, Edinburg, Texas 78539 or online at the Hidalgo County Tax Assessor-Collector's website at: <http://www.hidalgocountytax.org>.

(b) An applicant for a motor vehicle title service license must complete all forms required by the Hidalgo County Tax Assessor-Collector. The applicant must sign the application form and pay the license fee. An application must include:

(1) the applicant's name, business address, and business telephone number;

(2) the name under which the applicant will do business;

(3) the physical address of each office from which the applicant will conduct business (a P.O. Box will not be accepted) and a corresponding photo of each building where business is being conducted;

(4) a statement indicating whether the applicant has previously applied for a license under this section, the result of the previous application, and whether the applicant has ever been the holder of a license under this section that was revoked or suspended in any Texas county;

(5) the applicant's federal tax identification number;

(6) the applicant's state sales tax number; and

(7) the name of all individuals who have an ownership interest in the applicant motor vehicle title service company;

(8) if applicable, motor vehicle license information for each individual who has an ownership interest in the applicant's motor vehicle title service company.

(c) Following the submission of an application, an applicant must submit to a criminal background check in conformance with policies adopted by the Hidalgo County Tax Assessor-Collector.

(d) An applicant must present a valid, government-issued picture identification at the time of application. Lack of identification shall prevent the Hidalgo County Tax Assessor-Collector from granting a person's application for a title service license.

(e) An applicant must be at least 18 years of age on the date the application is submitted to apply for a title service license.

(f) Applicants will be notified of the outcome of an application within 30 days of the application being submitted to the Hidalgo County Tax Assessor-Collector. This notification will be mailed to the business address listed on the application.

(g) All licenses are issued for a period of one year and must be renewed each year thereafter. A renewal application has the same requirements as a new application.

(h) A license may not be issued under a name that is fictitious; a name that is similar to or may be confused with the name of a governmental entity; or a name that is deceptive or misleading to the public.

§401.5. Additional Application Requirements for Certain Businesses.

(a) Corporation. In addition to the information required above concerning General License Application Requirements, an applicant for a motor vehicle title service license that intends to engage in business as a corporation shall submit the following information:

(1) the state of incorporation (if any);

(2) a "doing business as" (DBA) certificate or articles of incorporation;

(3) the name, address, date of birth, and social security number of each of the principal owners and directors of the corporation;

(4) information about each officer and director as requested by the Hidalgo County Tax Assessor-Collector to establish the business reputation and character of the applicant; and

(5) a statement indicating whether an employee, officer, or director has been refused a motor vehicle title service license or a title service runner's license or has been the holder of a license that was revoked or suspended in any Texas county.

(b) Partnership. In addition to the information required above concerning General License Application Requirements, a motor vehicle title service license applicant that intends to engage in business as a partnership shall submit an application that includes the following information:

(1) the names, address, date of birth, and social security number of each partner;

(2) information about each partner as requested by the Hidalgo County Tax Assessor-Collector to establish the business reputation and character of the applicant; and

(3) a statement indicating whether a partner or employee has been refused a motor vehicle title service license or a title service runner's license or has been the holder of a license that was revoked or suspended in any Texas county.

§401.6. Tax Assessor-Collector Transactions.

(a) All vehicle transactions for Hidalgo County will be processed at the Hidalgo County Tax Office, 2804 S. US HWY 281, Edinburg, Texas 78539; or any other location specified by the Tax Assessor-Collector in writing at: <http://www.hidalgocountytax.org>.

(b) Title service license holders and title service runners may conduct business at privately run, contracted offices. A list of these offices is available upon request.

(c) An Hidalgo County Tax Assessor-Collector title service transaction form must accompany all motor vehicle title service transactions. Title service providers may obtain a blank title service transaction form from the Hidalgo County Tax Assessor-Collector. The motor vehicle title service company is responsible for the accuracy and validity of the information for each vehicle listed. Only vehicles authorized and listed by the licensed motor vehicle title service will be processed.

(d) Motor vehicle title services and runners may only process the following documents: motor vehicle title applications; motor vehicle registration renewal applications; requests for replacement windshield stickers; and requests for new or replacement vehicle license plates. The Hidalgo County Tax Assessor-Collector will also accept applications for a motor vehicle mechanic's lien title, a motor vehicle storage lien title and a bond title from a motor vehicle title services or runners.

(e) After the final vehicle transaction on each transaction sheet is completed, a copy of the transaction sheet will remain on file at the office of the Hidalgo County Tax Assessor-Collector.

(f) A motor vehicle title service shall assume the responsibility for the accuracy and validity of all documents presented to the Hidalgo County Tax Assessor-Collector under its name.

(g) Title service runners must be identified and sponsored by a motor vehicle title service company in order to conduct business on the motor vehicle title service's behalf. The required documents for any runner must be on file with each service company for which the runner is an authorized agent. Individuals whose names are not on file with the Hidalgo County Tax Assessor-Collector as a title service runner acting on behalf of a motor vehicle title service will not be allowed to conduct business with the Hidalgo County Tax Assessor-Collector on behalf of that motor vehicle title service.

§401.7. Record Keeping.

(a) A holder of a motor vehicle title service license shall maintain records as required by Texas law for each transaction in which the license holder receives compensation. The records shall include:

(1) the date of the transaction;

(2) the name, age, address, sex, driver license number, and a legible photocopy of the driver's license for each customer; and

(3) the vehicle make, model, year, license plate number, vehicle identification number, and a legible photocopy of proof of financial responsibility for the motor vehicle involved.

(b) A motor vehicle title service shall keep, for at least two (2) years after the date of the transaction:

(1) two copies of all records required under this section;

(2) legible photocopies of any documents submitted by a customer; and

(3) legible photocopies of any documents submitted to the Hidalgo County Tax Assessor-Collector.

(c) A motor vehicle title service license holder or any of its employees shall allow an inspection of the required records by a peace officer on the premises of the motor vehicle title service at any reason-

able time to verify, check, or audit the records. Failure to do so, or to maintain required records, may result in discipline under these rules.

§401.8. License Renewal.

(a) A license issued pursuant to these rules expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee as outlined above. All renewals will be subject to an additional criminal background check and confirmation of the applicant's current address and contact information.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the Hidalgo County Tax Assessor-Collector before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section.

(c) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Hidalgo County Tax Assessor-Collector one and one-half times the required renewal fee.

(d) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the Hidalgo County Tax Assessor-Collector two times the required renewal fee.

(e) If a person's license has been expired for one year or more, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license. Notwithstanding this, if a person was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person may renew an expired license. The person must pay to the Hidalgo County Tax Assessor-Collector a fee that is equal to two times the required renewal fee for the license.

(f) Before the 30th day preceding the date on which a person's license expires, the Hidalgo County Tax Assessor-Collector shall notify the person of the impending expiration. The notice must be in writing and sent to the person's last known address according to the records of the Hidalgo County Tax Assessor-Collector. Failure to send notice under this provision, however, does not provide any right or remedy to a license holder.

§401.9. Denial, Suspension, or Revocation of License.

(a) Grounds for the denial, suspension, revocation, or denial of reinstatement of a title service license or title service runner license in Hidalgo County include, but are not limited to:

(1) having been found to have submitted a vehicle packet, or other document, to the Hidalgo County Tax Assessor-Collector's office which contains false information, and the Hidalgo County Tax Assessor-Collector determines that the false information was intentionally submitted by the motor vehicle title service license holder or title service runner;

(2) having been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the completion date of the applicant's sentence is fewer than five years from the date of applying for a motor vehicle title service license;

(3) having been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(4) having been found in violation of the administrative procedures required by the Texas Department of Transportation;

(5) in the event the Tax Assessor-Collector determines a title service license holder has delinquent Class C misdemeanor fines, the licensee shall have thirty calendar (30) days from the date of deposit of written notice into the U.S. Postal Service to pay or otherwise resolve the fines. If the fines remain unresolved after thirty calendar (30) days, the Tax Assessor-Collector may, in his discretion, deny, suspend, refuse to renew, or revoke, as provided in this section, the license of that title service license holder;

(6) a title service runner license may be revoked or suspended if the title service runner has presented a title packet to the Hidalgo County Tax Assessor-Collector that was not authorized by a licensed motor vehicle title service or if the title service runner altered or forged the original paperwork prepared for and signed by the motor vehicle title service;

(7) failure to maintain records required by §520.057 of the Texas Transportation Code or this section;

(8) behavior that causes disruption or creates a security concern to any tax office location or contracted office location, as determined by the Tax Assessor-Collector or designee, in his discretion; or

(9) involvement in the issuance of fraudulent liability insurance while holding an Hidalgo County title service license, as determined by the Tax Assessor-Collector or designee, in his discretion.

(b) The Hidalgo County Tax Assessor-Collector shall consider any and all substantial evidence available in making factual determinations under this section.

(c) If the Hidalgo County Tax Assessor-Collector makes a determination that a person's license hereunder should be denied, cancelled, suspended, or revoked, then the Tax Assessor-Collector shall send notice of the action to the person, by certified mail, stating the facts or conduct alleged to warrant the action.

(d) Upon a determination of violation of this section, the Hidalgo County Tax Assessor-Collector may order the violator's license suspended for up to one (1) year for the first offense. The Tax Assessor-Collector, in his discretion, may order an additional suspension for up to one year or the revocation of the holder's license for the second offense. A license may be revoked upon a third offense.

(e) A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation. A person whose license has been revoked must apply for a new license under this section.

(f) A license may not be issued under a fictitious name that is similar to or may be confused with the name of a governmental entity or that is deceptive or misleading to the public.

(g) The Tax Assessor-Collector may discipline a title service license holder for acts in violation of these regulations or other law committed by a title service runner employed or contracted by the title service license holder. Such discipline may include suspension or revocation of the title service license holder's license if the Tax Assessor-Collector also suspends or revokes the license of the at-fault title service runner.

§401.10. The Review Board.

(a) A person who receives notice of adverse action taken on his license by the Hidalgo County Tax Assessor-Collector may submit a written request for appeal or protest and submit evidence, in the form of documents or testimony, to demonstrate that person's compliance with all requirements for the issuance, retention, or reinstatement of the person's license. The person must submit evidence and file a written request for the appeal of an action taken on the person's license with the

County Tax Assessor-Collector within 10 calendar days from the date of receipt of the notice of action on the person's license. Proof of receipt of a notice of action, or any other document that triggers a deadline under this section, includes, but is not limited to, a certified mail return receipt. The Tax Assessor-Collector or the Review Board may grant additional time to comply with this section upon written request.

(b) Evidence and/or a written request for an appeal must be sent to Hidalgo County Tax Office, via certified mail at 2804 S. US HWY 281, Edinburg, Texas 78539/P.O. Box 2099, Edinburg, Texas 78540 or at the address published at: <http://www.hidalgocountytax.org>.

(c) Upon timely filing of a request for an appeal, the County Tax Assessor-Collector shall request review by the Review Board. The adverse action shall be stayed until a final decision is made on the license.

(d) The above-referenced Review Board, designated by the Hidalgo County Tax Assessor-Collector, shall consist of an active member of the licensed Title Service, the Tax Assessor-Collector or his/her representative, and one law enforcement officer from the Fraud Investigations Department.

(e) Each member of the Review Board shall serve for a term lasting for one year. A member may be designated for additional terms as deemed appropriate by the Hidalgo County Tax Assessor-Collector.

(f) If a member is absent for three consecutive meetings, the Tax Assessor-Collector, may, in his discretion, remove the member and appoint a new member to serve the remainder of the term.

(g) If a review board member is removed or resigns, the Tax Assessor-Collector may appoint a new review board member to fill that member's position. The new member will serve for the remainder of the former member's term.

(h) The Review Board shall meet as needed, on a date determined by the Hidalgo County Tax Assessor-Collector. The Board will review any appeals and make a recommendation to the County Tax Assessor-Collector stating whether the Board agrees or disagrees with the action taken.

(i) The Hidalgo County Tax Assessor-Collector shall be the Chair of the Review Board.

(j) A quorum of three members of the Review Board must be present to render a decision. No proxy votes will be allowed.

(k) Review Board decisions are administrative in nature. As such courtroom rules of evidence shall not apply. However, the Review Board Chair may limit or discard evidence that he or she finds is not material and relevant.

(l) The parties to a Review Board proceeding shall file and exchange documentary evidence at least seven (7) days before a Review Board proceeding. The Chair may, at the Chair's discretion, exclude evidence that is not timely filed and served on the other party(ies).

(m) A simple majority vote of a quorum of Review Board members shall determine the recommendation on matters under consideration. The Tax Assessor-Collector's Fraud Investigations Division, or his or her designee, shall present the case to the Review Board

and carry the burden of proof. The standard of proof shall be by a preponderance of the evidence.

(n) A quorum of the Review Board may draft and approve other procedural rules that are not inconsistent with this section or other law. Any such rules must be published on the Hidalgo County website and made available to the public in print form upon request.

(o) All decisions related to license appeals or protests shall be subject to final review and determination by the Hidalgo County Tax Assessor-Collector. The Hidalgo County Tax Assessor-Collector shall send disposition of the appeal to the person by registered or certified mail. If the Tax Assessor-Collector does not reinstate the license, any adverse action stayed by the appeal will be reinstated.

#### §401.11. Exemptions.

The following persons and their agents are exempt from the licensing and other requirements described in this section:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by the department under Texas Transportation Code Chapter 503;

(2) a vehicle lessor holding a license issued by the Motor Vehicle Board under Chapter 2301, Texas Occupations Code, or a trust or other entity that is specifically not required to obtain a lessor license under §2301.254(a), Texas Occupations Code; and

(3) a vehicle lease facilitator holding a license issued by the Motor Vehicle Board under Chapter 2301, Texas Occupations Code.

#### §401.12. Training.

The Tax Assessor-Collector may require title service license holders and title service runners to attend an annual training to orient such licensees to these sections, Texas law, and the Tax Assessor-Collector's policies under these sections. Failure to attend the training may result in discipline under these sections.

#### §401.13. Policies and Procedures.

The Tax Assessor-Collector may authorize other policies and procedures that are not inconsistent with these sections or other law and to the extent authorized by law.

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

Filed with the Office of the Secretary of State on January 21, 2016.

TRD-201600253

Pablo (Paul) Villarreal, Jr.

Tax Assessor Collector

Hidalgo County Tax Assessor-Collector

Earliest possible date of adoption: March 6, 2016

For further information, please call: (956) 318-2157

