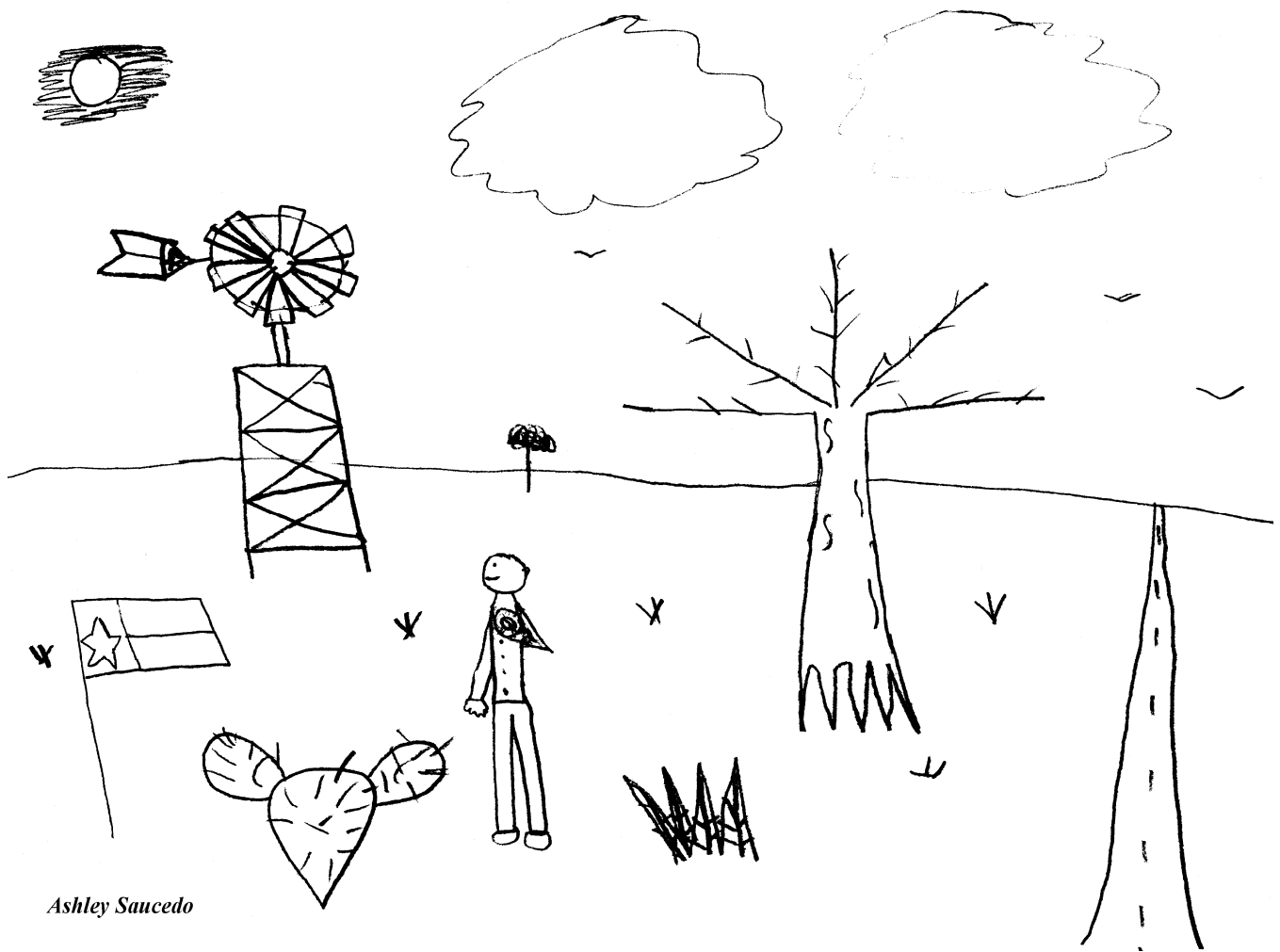

TEXAS REGISTER

Volume 43 Number 22

June 1, 2018

Pages 3529 - 3666



Ashley Saucedo

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

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

***Texas Register*, (ISSN 0362-4781, USPS 12-0090)**, is published weekly (52 times per year) for \$297.00 (\$438.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, TX 78711
(512) 463-5561
FAX (512) 463-5569

<http://www.sos.state.tx.us>
register@sos.texas.gov

Secretary of State - Rolando B. Pablos

Director - Robert Summers

Staff

Leti Benavides
Belinda Kirk
Jill S. Ledbetter
Cecilia Mena
Joy L. Morgan
Breanna Mutschler
Andrea Reyes
Barbara Strickland

IN THIS ISSUE

ATTORNEY GENERAL

Opinions.....3535

PROPOSED RULES

TEXAS HIGHER EDUCATION COORDINATING BOARD

AGENCY ADMINISTRATION

19 TAC §1.83, §1.84.....3539

TEXAS EDUCATION AGENCY

PLANNING AND ACCOUNTABILITY

19 TAC §97.1062.....3539

19 TAC §97.1070.....3543

TEXAS BOARD OF NURSING

VOCATIONAL NURSING EDUCATION

22 TAC §§214.2 - 214.4, 214.6 - 214.11, 214.13.....3544

PROFESSIONAL NURSING EDUCATION

22 TAC §§215.2 - 215.4, 215.6 - 215.11, 215.13.....3553

LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.1.....3564

22 TAC §217.14.....3565

22 TAC §217.23.....3567

TEXAS REAL ESTATE COMMISSION

GENERAL PROVISIONS

22 TAC §535.155.....3571

CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

POLICIES AND PROCEDURES

25 TAC §701.3, §701.27.....3573

GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.11.....3577

COMPTROLLER OF PUBLIC ACCOUNTS

FUNDS MANAGEMENT (FISCAL AFFAIRS)

34 TAC §§5.12, 5.14, 5.15.....3580

TEXAS COMMISSION ON FIRE PROTECTION

DRIVER/OPERATOR

37 TAC §433.201.....3584

WITHDRAWN RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID MANAGED CARE

1 TAC §353.1303.....3585

ADOPTED RULES

TEXAS STATE BOARD OF PHARMACY

PHARMACIES

22 TAC §291.9.....3587

22 TAC §291.33.....3587

22 TAC §291.75.....3588

22 TAC §291.76.....3591

22 TAC §291.121.....3591

22 TAC §291.125.....3592

22 TAC §291.151.....3592

TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

RULES OF PROFESSIONAL CONDUCT

22 TAC §501.90.....3592

22 TAC §501.93.....3593

ELIGIBILITY

22 TAC §511.57.....3593

22 TAC §511.59.....3593

DEPARTMENT OF STATE HEALTH SERVICES

COMMUNICABLE DISEASES

25 TAC §97.136.....3594

SPECIFIC ADDITIONAL REQUIREMENTS FOR DRUGS

25 TAC §§230.11, 230.16, 230.19.....3595

25 TAC §§230.12 - 230.14.....3595

CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.13, §703.21.....3595

TEXAS DEPARTMENT OF INSURANCE

TITLE INSURANCE

28 TAC §9.1.....3596

TEXAS PARKS AND WILDLIFE DEPARTMENT

EXECUTIVE

31 TAC §51.612.....3598

FISHERIES

31 TAC §57.981.....3603

31 TAC §57.992.....3609

WILDLIFE

31 TAC §§65.42, 65.46, 65.60, 65.64, 65.66.....	3609
31 TAC §65.81.....	3619
31 TAC §§65.315, 65.318 - 65.321	3620
RULE REVIEW	
Proposed Rule Reviews	
Texas State Board of Pharmacy	3627
IN ADDITION	
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	3629
Deep East Texas Council of Governments	
Harvey MOD Hearing.....	3629
Texas Council for Developmental Disabilities	
Request for Proposals: Texas Council for Developmental Disabilities Aging Projects.....	3629
Request for Proposals: Texas Council for Developmental Disabilities Health and Wellness Projects.....	3629
Request for Proposals: Texas Council for Developmental Disabilities Statewide Community Services Peer Support Specialists Projects	3630
Texas Commission on Environmental Quality	
Agreed Orders.....	3630
Amended Combined Notice of Public Meeting (to Correct the Address of the Public Meeting Location) and Notice of Application and Preliminary Decision for Air Quality Permits Proposed Air Quality Permit Numbers 144729, PSDTX1514, and GHGPSDTX165	3634
Amended Notice of Hearing (to Change Public View Location) The Premcor Refining Group Inc. SOAH Docket No. 582-18-3558 TCEQ Docket No. 2018-0572-AIR Proposed Permit Nos. 6825A, PSDTX49M1, and GHGPSDTX167	3636
Combined Notice of Receipt of Application and Intent to Obtain Water Quality Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater and Notice of Public Meeting for Water Quality TPDES Permit New Permit No. WQ0015616001	3637
Enforcement Orders.....	3638
Enforcement Orders.....	3640
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions	3642
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions	3643
Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of City of Terrell	3643
Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Dittrich, Inc. dba The Hitching Post.....	3644
Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Ethos Pet Nutrition, Inc.	3645

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of SKYPAK CORP dba Country Food Store	3645
Notice of Public Meeting for an Air Quality Permit - Permit Number: 2501A.....	3646
Notice of Water Rights Application.....	3647
Texas Ethics Commission	
List of Late Filers.....	3647
Texas Health and Human Services Commission	
Notice of Public Hearing on Proposed Medicaid Payment Rates for the Home and Community-Based Services - Adult Mental Health Program	3648
Department of State Health Services	
Licensing Actions for Radioactive Materials	3648
Licensing Actions for Radioactive Materials	3650
Texas Department of Insurance	
Company Licensing	3653
Texas Department of Insurance, Division of Workers' Compensation	
Correction of Error.....	3653
Texas Lottery Commission	
Scratch Ticket Game Number 2077 "Millionaire Club".....	3654
North Central Texas Council of Governments	
Notice of Contract Award - DART Red and Blue Line Corridors Transit Oriented Development Parking Management Study	3661
Request for Partners to Apply for the Advanced Transportation and Congestion Management Technologies Deployment Initiative	3661
Panhandle Regional Planning Commission	
RFP-Posting for Public Information Campaign.....	3662
Plateau Water Planning Group	
Vacancy Notice - Public Interest - Bandera, Kerr or Real County	3662
Vacancy Notice - Public Interest - Edwards, Val Verde or Kinney County.....	3663
Vacancy Notice - Val Verde County.....	3663
Public Utility Commission of Texas	
Notice of Application for Approval of a Service Area Contract ...	3663
Notice of Application for Sale, Transfer, or Merger.....	3664
Notice of Application for Sale, Transfer, or Merger.....	3664
Notice of Application to Amend a Water Certificate of Convenience and Necessity	3664
Notice of Application to Amend Eligible Telecommunications Carrier and Amend Eligible Telecommunications Provider Designations	3664
Notice of Petition for Recovery of Universal Service Funding	3665

Notice of Petition for True-Up of 2016 Federal Universal Service Fund
Impacts to the Texas Universal Service Fund.....3665

Texas Department of Transportation

Public Notice - Aviation.....3665

Public Notice - FY 2019-2021 Disadvantaged Business Enterprise
Goal for Federal Aviation Administration Projects3665

Workforce Solutions Brazos Valley Board

Notice of Additional Period for Questions & Answers for Current
RFQ for the Management and Operations of Childcare Services and/or
Workforce Center Services and/or Business Services3666

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.texas.gov

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.texas.gov>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Opinions

Opinion No. KP-0199

Mr. Joe A. Garcia

Executive Director

Manufactured Housing Division

Texas Department of Housing and Community Affairs

Post Office Box 12489

Austin, Texas 78711-2489

Re: Whether the authority granted by section 1201.461 of the Occupations Code to a manufactured home retailer to remove the label of a salvaged manufactured home is preempted by federal law (RQ-0194-KP)

S U M M A R Y

The National Manufactured Housing Construction and Safety Standards Act of 1974 does not preempt the authority provided to retailers of manufactured homes under Texas Occupations Code section 1201.461 to remove labels certifying compliance with federal standards from irreparably damaged manufactured homes.

Opinion No. KP-0200

The Honorable Lucy Wilke

District Attorney

216th Judicial District

200 Earl Garrett Street, Suite 202

Kerrville, Texas 78028

Re: Use of civil asset forfeiture funds to purchase property insurance pending appeal (RQ-0195-KP)

S U M M A R Y

A court would likely conclude that an attorney representing the State may use civil asset forfeiture funds accrued under article 59.06(c)(1) of the Texas Code of Criminal Procedure to purchase property insurance protecting real property that is the subject of an appeal from a forfeiture judgment under article 59.05(e).

Opinion No. KP-0201

The Honorable Luis V. Saenz

Cameron County District Attorney

964 East Harrison Street, Fourth Floor

Brownsville, Texas 78520

Re: Authority of a Justice of the Peace to hire and supervise a bailiff-and-warrant officer (RQ-0197-KP)

S U M M A R Y

Sections 151.001 and 151.002 of the Local Government Code authorize a justice court to appoint and supervise an employee to perform the traditional duties of a court bailiff for the court, although any duties that require additional qualifications, such as duties performed as a peace officer, may be subject to other law.

Employees of a justice court are not peace officers by virtue of that employment, although the statute does not prevent those employees from qualifying as a peace officer in some other capacity recognized by article 2.12 of the Code of Criminal Procedure.

A court is likely to conclude that a constable in one precinct does not possess the authority to employ, appoint, and commission a deputy to primarily perform peace officer duties for a justice court located in a different precinct.

Opinion No. KP-0202

Mr. J. Winston Krause

Chairman

Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Whether the rights that a grandfathered bingo commercial lessor holds under a commercial lessor license may be transferred to another entity under the license transfer provisions of the Bingo Enabling Act (RQ-0199-KP)

S U M M A R Y

A court would likely conclude that the language of the Bingo Enabling Act does not authorize the transfer of a commercial lessor license that includes a grandfathered right to lease to more than one licensed authorized organization.

Absent changed circumstances or a finding of extrinsic fraud or that the Lottery Commission abused its authority, a court would likely not disturb previous Lottery Commission orders transferring a commercial lessor license that included the right to lease to more than one licensed authorized organization.

A court would likely consider a change in the Lottery Commission's historical practice to be a "rule" within the Administrative Procedure Act requiring formal rule-making procedures.

Opinion No. KP-0203

Mr. Edward A. Dion, CPA, CIO

El Paso County Auditor

800 East Overland Street, Room 406

El Paso, Texas 79901-2407

Re: County authority to collect or delegate the collection of money owed to the county (RQ-0200-KP)

S U M M A R Y

Article 103.003(b-1) of the Code of Criminal Procedure authorizes a county commissioners court to collect amounts payable under title 2 of the code independently of the officials listed in article 103.003(a).

A court would likely conclude that article 103.003(b-1) authorizes a commissioners court to create a county department to assist the commissioners court to collect such payables.

A court would likely conclude that a commissioners court may contract with a collections firm, permitting the firm to collect payables into its own account, retain the additional collections fee, and deposit county money with the county treasurer, provided that the firm does so within the time permitted by statute.

Opinion No. KP-0204

The Honorable Scott Brumley

Potter County Attorney

500 South Fillmore, Room 301

Amarillo, Texas 79101

Re: Whether an independent school district may contribute funds to a scholarship program for graduates of the district to attend a community college (RQ-0202-KP)

S U M M A R Y

Section 45.105 of the Education Code authorizes an expenditure of an independent school district's funds for "other purposes necessary in the conduct of the public schools determined by the board of trustees." Accordingly, the Amarillo Independent School District's trustees must determine whether the proposed scholarship program is appropriate or conducive to the conduct of its public schools.

Article III, section 52(a) of the Texas Constitution prohibits the expenditure of public funds for private purposes. A school district's expenditure for a scholarship program does not violate article III, section 52(a) provided that the school district: (1) ensures the expenditure is to accomplish a public purpose of the school district, not to benefit private parties; (2) retains sufficient control over the public funds to ensure the public purpose is accomplished; and (3) ensures the school district receives a return benefit. Whether a particular expenditure satisfies this three-part test is a determination for the school district in the first instance, subject to judicial review.

Opinion No. KP-0205

The Honorable Rafael Anchia

Chair, Committee on International Trade and Intergovernmental Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of an individual commissioner of the Railroad Commission to unilaterally terminate or hire an Executive Director for the Commission (RQ-0203-KP)

S U M M A R Y

A single member of the Railroad Commission lacks authority to unilaterally terminate or hire an executive director without deliberation and a decision from the Commission as a whole at a properly-called meeting.

Whether the choice of resigning or being fired constitutes a termination in any given circumstance involves fact issues that cannot be resolved through the opinion process.

Whether a written communication sent from one commissioner to another involves a violation of the Open Meetings Act involves fact issues that cannot be resolved through the opinion process.

Opinion No. KP-0206

The Honorable Renee Ann Mueller

Washington County Attorney

100 East Main, Suite 200

Brenham, Texas 77833

Re: Authority of a magistrate to designate a specific peace officer or law enforcement agency to execute an emergency detention warrant under subsection 573.012(d) of the Health and Safety Code (RQ-0204-KP)

S U M M A R Y

A magistrate may direct an emergency detention warrant issued pursuant to subsection 573.012(d) of the Health and Safety Code to any on-duty peace officer listed in article 2.12 of the Code of Criminal Procedure, regardless of the location within the county of the person who is the subject of the warrant. A peace officer executing an emergency detention warrant has a duty to ensure the transport of a person subject to the warrant to an appropriate facility pursuant to subsection 573.012(e). Subsection 573.012(d) contains no jurisdictional element that would determine whether municipal or county law enforcement bears the responsibility for transporting a person to an appropriate facility pursuant to subsection 573.012(e). A peace officer refusing to transport a person to an appropriate facility pursuant to subsection 573.012(e) is liable for contempt. Such an action for contempt could likely be brought by a court having specific jurisdiction over mental health proceedings.

Opinion No. KP-0207

The Honorable Mark A. Gonzalez

105th Judicial District Attorney

Nueces County Courthouse

901 Leopard, Room 206

Corpus Christi, Texas 78401-3681

Re: Whether an employee of a district attorney's office is eligible to execute and serve a subpoena under article 24.01(b)(2) of the Code of Criminal Procedure if the employee is not, at the time of issuance, involved in the proceeding for which the appearance is sought (RQ-0207-KP)

S U M M A R Y

Article 24.01(b)(2) of the Code of Criminal Procedure allows service of a subpoena in a criminal matter by an attorney or other employee of

a district attorney's office who, at the time of the subpoena's issuance, is not involved in the prosecution of the case in any capacity.

Opinion No. KP-0208

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether the Harris County Department of Education may establish a relief fund to provide grant funding to independent school districts located in Harris County impacted by Hurricane Harvey (RQ-0208-KP)

S U M M A R Y

Under former chapter 18 of the Education Code, the Harris County Department of Education's property tax revenues may be expended only for the advancement of public free schools, the equalization of educational opportunities, administration expenses, and superintendent salary and office expenses.

Assuming any tax revenues used meet the statutory requirements of former chapters 17 and 18 of the Education Code, the Department may use its public funds to establish a Harvey Relief Fund consistent with Texas Constitution article III, section 52(a), if the Department: (1) ensures the expenditure is to accomplish a public purpose of the Department, not to benefit private parties; (2) retains sufficient control over the public funds to ensure the accomplishment of the public purpose; and (3) ensures the Department receives a return benefit.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201802186

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: May 17, 2018





*Francisco Aguilera
11th Grade*

PROPOSED RULES

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

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

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER C. STANDARDS OF CONDUCT

19 TAC §1.83, §1.84

The Texas Higher Education Coordinating Board proposes amendments to §1.83 and §1.84, concerning Agency Administration. Specifically, the amendments will correct a section reference and update the name of the official nonprofit partner (ONP) of the Board.

Heather A. Marsh has determined that for each year of the first five years the proposal is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Marsh has also determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of administering the proposal will be the enhanced visibility of the state's strategic plan for higher education. There is no effect on small businesses, micro-businesses or rural communities. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Government Growth Impact Statement

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

Comments on the proposal may be submitted to Heather A. Marsh, 1200 East Lane Anderson, Austin, Texas 78752, heather.marsh@thehb.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 Government Code, §2255.001, which provides the Coordinating Board with

the authority to establish the criteria, procedures, and standards of conduct governing the relationship between the Texas Higher Education Coordinating Board (Board) and its officers and employees and private donors and private organizations that exist to further the duties and purposes of the Board.

The amendments affect Texas Government Code, §2255.001 and 19 Texas Administrative Code, Part 1, §1.83 and §1.84.

§1.83. Donations by a Private Donor to a Private Organization That Exists To Further the Purposes and Duties of the Board.

(a) (No change.)

(b) The private organization shall administer and use the donation in accordance with the provisions in the memorandum of understanding between the private organization and the Board, as described in §1.85(c) [~~§1.65(e)~~] of this title (relating to Relationship between a Private Organization and the Board).

§1.84. Organizing a Private Organization That Exists To Further the Duties and Purposes of the Board.

(a) The Texas Higher Education Foundation [~~"College for All Texans Foundation: Closing the Gaps"~~] is designated as the official nonprofit partner (ONP) of the Board.

(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 May 21, 2018.

TRD-201802230

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: July 1, 2018

For further information, please call: (512) 427-6104



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION

STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1062

The Texas Education Agency (TEA) proposes new §97.1062, concerning applicability of intervention pause under district partnerships or mathematics innovation zones. The proposed new section would implement Senate Bill (SB) 1882 and SB 1318, 85th Texas Legislature, Regular Session, 2017.

Proposed new 19 TAC §97.1062, Applicability of Intervention Pause under District Partnerships or Mathematics Innovation Zones, would address the implementation of the exemption from intervention that applies to partnerships to operate school district campuses (partnerships) and designation of a campus of a school district or open-enrollment charter school as a mathematics innovation zone (MIZ).

Proposed new subsection (a) would clarify that §97.1062 discusses the application of intervention pauses for school district campuses pursuant to the district charter partnership statute (Texas Education Code (TEC), §11.174) and for campuses of school districts and open-enrollment charter schools pursuant to the mathematics innovation zone statute (TEC, §28.020). As the surrounding rules in Chapter 97, Subchapter EE, Division 1, apply to both open-enrollment charter school campuses as well as school district campuses, this explicit statement should remove doubt regarding the application of the proposed rule to open-enrollment charter campuses in connection with the district charter partnership statute.

As the intervention pause does not apply to interventions that result from the first year of unacceptable performance, proposed new subsection (b) would implement the statutory requirement that a district charter partnership must begin operation after a campus has been rated unacceptable in order to be eligible for an intervention pause. The subsection would clarify that the operation must be for an entire school year unless a special circumstance exists as defined by other rules implementing the district charter partnership. This would ensure school districts understand how and when the campus would be eligible for the intervention pause.

The MIZ statute does not contain the same intervention pause eligibility requirement as the partnership statute that the campus be rated unacceptable prior to taking the actions that make the campus eligible for the intervention pause. However, the intervention pause by statute does not apply to the interventions that stem from the first year of unacceptable performance. Proposed new subsection (c) would clarify that designation as an MIZ during a year that could count as the first year of consecutive years of unacceptable performance will not cease the resulting interventions. As the statute limits the pause to the first two years of designation, the subsection would make clear that being designated an MIZ for the first two years of unacceptable performance only results in one year of intervention pause. This would ensure school districts and open-enrollment charter schools understand how and when the campus would be eligible for the intervention pause.

As the intervention pause only applies to the first two years for which the campus operated under a partnership or was designated an MIZ, proposed new subsection (d) would clarify that orders of intervention will still issue that arise from the performance rating from the year prior to the start of the district charter partnership or designation as an MIZ. Accountability ratings issue in August upon the conclusion of the school year. Final accountability ratings will not be issued until the subsequent school year has started. The statutes authorizing the intervention pauses only apply the intervention pause for the school years in which the district charter partnership operates or receives designation

as an MIZ. As a consequence, the intervention pause would not affect the requirement that interventions be ordered for the performance of the prior year. This would ensure that the statutory requirements for consequences of unacceptable performance harmonize with the intervention pause enacted by the legislature. Proposed new subsection (d), working in conjunction with proposed new subsection (e), would clarify that statutory orders of interventions will be issued for performance for the year prior to the operation of the partnership or designation of MIZ, though enforcement of the order in the subsequent year will be paused. As a corollary, once the intervention pause expires, the order previously issued would automatically resume its effect. This would ensure that school districts and open-enrollment charter schools understand that if the pause expires without removing the campus from being subject to interventions, then implementation of interventions previously ordered must be fulfilled without further action by the Texas Education Agency (TEA).

Proposed new subsection (e) would make clear that the TEA will cease to enforce the increasing interventions that arise from the second consecutive year of unacceptable performance (development of a turnaround plan) to the interventions that arise from the fifth consecutive year of unacceptable performance (campus closure or board of managers for the school district or open-enrollment charter school). This would fulfill the legislative intent in implementing the pause by maximizing the time periods for which the school district or open-enrollment charter school may take advantage of the intervention pause to improve student performance. The subsection would make clear that the intervention pause ceases on the conclusion of the second consecutive school year of operation or designation unless extended under the commissioner's statutory authority. This would align the expiration with the statutory directive that the pause applies to school years.

Proposed new subsection (f) would make clear that the TEA will continue to enforce interventions not covered by the pause. As the legislation only provides for the pause of certain interventions, this provision would eliminate any lack of understanding regarding whether other enforcement actions will persist.

Proposed new subsection (g) would make clear that, if a campus loses an MIZ designation or a partnership no longer operates or ceases to meet the eligibility requirements for a district charter partnership, then the campus loses its qualification for an intervention pause. This would prevent campuses from initiating an effort and then ceasing to fulfill the alternative educational arrangements incentivized by the Texas legislature.

Proposed new subsection (h) would indicate that the TEA will not pursue interventions if, while during the pause, the campus attains an acceptable or higher performance rating. This would ensure that proposed new subsection (e) is not read to resume interventions upon expiration of the pause even if the campus attains an acceptable or higher performance rating. The subsection would specifically remove TEC, §39A.010, from its application because that section imposes a continuing duty with regard to turnaround plans even if a campus attains an acceptable or higher performance rating.

Proposed new subsection (i) would clarify the counting rules for consecutive years of unacceptable performance accounting for the time when the intervention pause applies. The provision would make clear that the pause, while not counted in the number of consecutive years, does not break the consecutive year chain. This would align with the statutory requirement that the campus is exempt from intervention during the intervention

pause. It would also make clear that in certain circumstances explained in other subsections in the rule, the intervention pause may only constitute one year, as the intervention pause only applies to certain interventions. The legislation was designed to encourage schools to try alternative educational arrangements to improve performance of students. This provision would implement the statutory requirements that the intervention pause does not restart the clock that may result in ultimate sanctions required by statute.

Proposed new subsection (j) would make clear that school districts and open-enrollment charter schools understand that a district charter partnership or designation as an MIZ that begins the year after the fifth consecutive year of poor campus performance does not pause the requirement that the campus be ordered closed or a board of managers take control of the school district or open-enrollment charter school. As the legislature applies the intervention pause to the years under which the district charter partnership operates or the MIZ designation applies, the intervention pause does not affect interventions that must result from the performance of the prior year. The law's requirement that the campus cease to exist or the board of trustees cede their authority was fixed prior to the district implementing the policies that allow access to the intervention pause. This rule would ensure school districts and open-enrollment charter schools can adequately plan when a campus needs to implement a partnership or MIZ to take advantage of the intervention pause.

Proposed new subsection (k) would make clear that a campus will receive an accountability rating even though it was eligible for an intervention pause. This would implement the statutory directive that MIZ campuses still receive accountability ratings, as the exemption from intervention does not apply to the assignment of a performance rating. This would fulfill the public policy of showing performance and change in performance at the campus.

Proposed new subsection (l) would make clear that performance of a campus that receives an intervention pause will still be included in the performance of the school district or open-enrollment charter school and does not extend to other campuses that have not implemented the actions necessary to receive the intervention pause. Both intervention pause statutes only exempt interventions for certain actions imposed on a particular campus. The statutes do not extend the intervention pause to the school district or open-enrollment charter school nor do they extend the intervention pause to any other campus that does not independently qualify for an intervention pause. This subsection would make clear that school districts and open-enrollment charter schools still retain responsibility for the performance of the campus and other campuses not initiating the necessary actions to receive an intervention pause and ensure fidelity in the development and implementation of the avenues that lead to an intervention pause.

Proposed new subsection (m) would replicate the TEC, §28.020, provision making commissioner determinations regarding implementation of MIZs, including the application of the intervention pause, final and unappealable.

Proposed new subsection (n) would provide a transition counting provision regarding implementation of an intervention pause. As a transition provision, 19 TAC §97.1077, School Year Under Contract to Operate a District Campus, authorizes operation of a district charter partnership for less than a year to count toward receiving an intervention pause. This provision would clarify that, if pursued, a district charter partnership will consume one full year

of receipt of the intervention pause. The policy underpinning the intervention pause requires a school district to pursue alternative educational delivery to improve student performance. The most practical approach is to develop the alternative education model and implement it for two full school years to change performance. By requiring partial year operation to count for a full year, the rule would encourage school districts to implement a particularly effective alternative educational model in exchange for access to an intervention pause for which they would otherwise not qualify as they could not have implemented the necessary requirements in time.

The proposed new rule would have no procedural and reporting implications.

The proposed new rule would require school districts and open-enrollment charter schools to maintain records that reflect the statutory requirements for district charter partnerships and MIZs and intervention pause eligibility.

FISCAL NOTE. Joe Siedlecki, associate commissioner for system support, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the new section.

There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed new section does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Siedlecki has determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing the proposed new section would be ensuring that school districts and open-enrollment charter schools and their students will understand the mechanics and effects of intervention pauses in connection with district charter partnerships and MIZs. 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, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; 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 June 1, 2018,

and ends July 2, 2018. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. A public hearing on the proposed new rule will be held from 9:00 a.m. until the conclusion of testimony or not later than 11:00 a.m. on June 25, 2018, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Individuals who wish to testify at the hearing should sign in at the hearing site; no prior registration is necessary. Questions about the hearing should be directed to Lindsay Denman at (512) 463-5226.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §11.174, as added by Senate Bill (SB) 1882, 85th Texas Legislature, Regular Session, 2017, which authorizes school districts who enter into a partnership to operate the school district's campus to receive an exemption from intervention for the first two years of operation of the partnership (intervention pause). The partnership and participants must satisfy the requirements of the statute and associated rules. Eligibility for the exemption only applies if operation of the partnership begins in a year following a year that the campus earns an unacceptable performance rating. The exemption from interventions applies to interventions for campuses that result from the second consecutive year of unacceptable performance and the fifth consecutive year of unacceptable performance. The commissioner is authorized to adopt rules to implement the section; TEC, §28.020, as added by SB 1318, 85th Texas Legislature, Regular Session, 2017, which exempts school districts and open-enrollment charter schools designated as mathematics innovation zones from interventions that apply to campuses that result from the second consecutive year of unacceptable performance and the fifth consecutive year of unacceptable performance. The commissioner is authorized to adopt rules to implement the section. Decisions of the commissioner under this section are final and unappealable; TEC, §39.001, which authorizes the commissioner to adopt rules regarding accountability; and TEC, §39A.115, which authorizes the commissioner to adopt rules regarding interventions that apply to campuses that result from the second consecutive year through the fifth consecutive year of unacceptable performance.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§11.174, 28.020, 39.001, and 39A.115.

§97.1062. Applicability of Intervention Pause under District Partnerships or Mathematics Innovation Zones.

(a) A campus under this section does not include a campus of an open-enrollment charter school unless specifically indicated when applying an intervention pause under Texas Education Code (TEC), §11.174. A campus under this section includes a campus of an open-enrollment charter school when applying an intervention pause under TEC, §28.020.

(b) A campus shall not qualify for an intervention pause pursuant to TEC, §11.174(f), unless during the school year prior to the operation of a partnership as provided by §97.1077(a) of this title (relating to School Year Under Contract to Operate a District Campus), the campus received an unacceptable performance rating, except as provided by §97.1077(e) of this title.

(c) A campus that qualifies for an intervention pause pursuant to TEC, §28.020(c), starting with the school year for which the campus received an unacceptable performance rating that followed a school year for which the campus received an acceptable rating, will be subject to any intervention arising from the first unacceptable performance rating and, subject to the campus remaining eligible for the intervention pause, will be provided a one-year intervention pause for interventions that arise from a second consecutive year of unacceptable performance ratings.

(d) The Texas Education Agency (TEA) will not withdraw or postpone issuing any orders or determinations required or authorized that arise due to the performance rating from the school year prior to the school year in which the campus qualifies for the intervention pause, and any order or determination will resume upon expiration of the intervention pause under subsection (e) of this section.

(e) Except as otherwise provided by this section and unless extended by the commissioner of education, the TEA will cease to enforce the interventions under TEC, §§39A.101-39A.111, until conclusion of the second consecutive school year of operation under:

(1) a partnership as defined by §97.1077(a)(2), (b), or (c) of this title; or

(2) designation as a mathematics innovation zone under TEC, §28.020, and applicable rules.

(f) Any intervention or sanction not covered by subsection (e) of this section shall continue.

(g) If a campus ceases to qualify for the intervention pause at any point during a school year, the TEA will resume previously ordered interventions and sanctions, order interventions and sanctions based on the rating from that school year, and count that rating for purposes of consecutive years of performance.

(h) The TEA will not pursue interventions under TEC, §§39A.101-39A.109 and 39A.111, for a campus eligible for an intervention pause if one of the school years eligible for an intervention pause results in an acceptable or higher overall rating.

(i) If, after the expiration of the intervention pause, a campus receives an unacceptable rating, the TEA will apply the requisite interventions that apply to the consecutive year that corresponds to the campus's actual number of consecutive years of unacceptable performance minus the number of intervention pause years and, if applicable, accounting for the modification under subsection (c) of this section.

(j) If a campus qualifies for an intervention pause for a school year after the conclusion of the school year in which an order is authorized under TEC, §39A.111, the intervention under TEC, §39A.111, will not pause.

(k) A campus that receives an intervention pause will still receive an accountability rating for that school year.

(l) Performance of students at a campus that receives an intervention pause shall be considered in the accountability rating of the school district or the open-enrollment charter school, and the application of an intervention pause to a campus shall not pause or alter any intervention applicable to the school district, open-enrollment charter school, or other campuses.

(m) A determination under this section that arises from the application of TEC, §28.020, is final and may not be appealed.

(n) The provisions of this subsection expire on September 1, 2023. A partial school year that results in an intervention pause under §97.1077(b) or (c) of this title constitutes one full year of a pause.

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

Filed with the Office of the Secretary of State on May 21, 2018.

TRD-201802223

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 1, 2018

For further information, please call: (512) 475-1497



19 TAC §97.1070

The Texas Education Agency (TEA) proposes new §97.1070, concerning increasing intensity of interventions and sanctions. The proposed new section would provide clarity regarding when the commissioner may exercise the statutory authority to increase the level of intervention and sanction applicable to a school district, an open-enrollment charter school, or a campus thereof.

Proposed new §97.1070, Increasing Intensity of Interventions and Sanctions, would implement Texas Education Code, §39A.901, which requires the commissioner to increase the level of state intervention and sanction for a school district, an open-enrollment charter school, or a campus thereof if an annual review of performance indicates a lack of improvement, unless the commissioner finds good cause for maintaining the current status.

Proposed new subsection (a) would indicate that the increase in level of intervention or sanction may be any of the interventions or sanctions authorized by the legislature, including closure or placement of a board of managers. The statute authorizes increasing levels but places no limitation on the amount of increase. In order to ensure students access to a successful educational program, the commissioner may exercise any authorized intervention or sanction in circumstances where the school district, open-enrollment charter school, or campus thereof (a school system) fails to improve the education provided to its students.

Proposed new subsection (b) would define lack of improvement as failure to change the overall rating of the school system subject to intervention to a higher overall rating. The current accountability system already looks at overall performance and improvement in performance. As school systems benefit from the better of overall performance or improvement in performance, the overall rating already accounts for appropriate measures of improvement and thus represents the most appropriate level of scrutiny for the statutory standard.

Proposed new subsection (c) would identify when the commissioner may exercise the authority to increase the level of intervention or sanction. One instance would be when a school system has exceeded the statutory limits on when final action must be taken. The reasons could be a transition provision or multiple years when a school district received a Not Rated rating. If the school system has failed to show improvement in student performance, rather than allow continued non-performance for students, the commissioner may increase the level of intervention or sanction to ensure students receive access to a quality educational program. Another instance would be when an intervening year does not otherwise count toward consecutive years

of unacceptable performance, but evidence shows that student performance has not improved. A school system should not benefit from ancillary events that impeded accountability when evidence clearly demonstrates that the school system has not improved the performance of its students. Further, as not all issues can be predicted, the commissioner would exercise this authority in situations when doing so would better fulfill the purpose of accountability. If a school system fails to show the ability to provide quality education opportunities to students, then action should be taken to swiftly intervene on behalf of the affected students.

Proposed new subsection (d) would establish that the commissioner may consider evidence from accountability ratings, accountability appeals, or any other evidence that shows good cause for maintaining the level of intervention or sanction. The subsection would also make clear that the commissioner is not required to make an affirmative finding that no good cause exists for maintaining the current level of sanction or intervention. This maximizes the information the commissioner will consider but forecloses technical arguments that might impede intervening on a school system that has failed to improve student performance.

The proposed new rule would have no procedural and reporting implications.

The proposed new rule would not increase locally maintained paperwork requirements.

FISCAL NOTE. Joe Siedlecki, associate commissioner for system support, has determined that for the first five-year period the new section is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the new section.

There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed new section does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT. TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Siedlecki has determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of enforcing the proposed new section would be ensuring the public is informed of an intervention process and related standards due to unacceptable performance of a school district, an open-enrollment charter school, or a campus thereof. 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, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; 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 June 1, 2018, and ends July 2, 2018. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. A public hearing on the proposed new rule will be held from 1:00 p.m. until the conclusion of testimony or not later than 3:00 p.m. on June 25, 2018, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Individuals who wish to testify at the hearing should sign in at the hearing site; no prior registration is necessary. Questions about the hearing should be directed to Lindsay Denman at (512) 463-5226.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §39A.901, which requires the commissioner to annually review the performance of school districts (as well as open-enrollment charter schools) or campuses subject to intervention and sanction. The statute requires the commissioner to increase the level of state intervention and sanction if the review indicates a lack of improvement unless the commissioner finds good cause for maintaining the current status; TEC, §39A.251, which applies interventions and sanctions for a school district or campus to an open-enrollment charter school; and TEC, §39A.252, which authorizes the commissioner to adopt rules regarding interventions and sanctions as those provisions relate to open-enrollment charters schools.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§39A.901, 39A.251, and 39A.252.

§97.1070. Increasing Intensity of Interventions and Sanctions.

(a) If a school district, open-enrollment charter school, or campus thereof does not exhibit improvement in student performance, the commissioner of education may increase the intensity of intervention and sanction that would otherwise be required by statute or rule, including ordering campus closure, school district annexation, or appointment of a board of managers for the school district or open-enrollment charter school.

(b) For purposes of this section, improvement means a change from one overall performance rating category under Texas Education Code (TEC), Chapter 39, to another, higher performance rating category under TEC, Chapter 39.

(c) The commissioner may exercise authority under this section when:

(1) a school district, open-enrollment charter school, or campus thereof has exceeded statutory or rule limits on consecutive years of poor performance, excluding any transition provisions allowed under statute or rule;

(2) circumstances suggest that the lack of improvement requires an increased level of intervention or sanction, even if the perfor-

mance in a school year would not otherwise count toward consecutive years of unacceptable performance that would be considered in determining the level of intervention or sanction; or

(3) the commissioner determines that increasing the intensity of intervention and sanction would better fulfill the purposes of accreditation statuses and accreditation sanctions established under §97.1053(a) of this title (relating to Purpose).

(d) The commissioner may determine that good cause exists to maintain the current level of intervention or sanction. Exercising authority under this section constitutes a determination that no good cause exists to maintain the current status. The commissioner may base the determination that no good cause exists to maintain the current status on any information available to the commissioner and may make the determination at any time.

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

Filed with the Office of the Secretary of State on May 21, 2018.

TRD-201802224

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 1, 2018

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.2 - 214.4, 214.6 - 214.11, 214.13

Introduction

The Texas Board of Nursing (Board) proposes amendments to §§214.2 - 214.4, 214.6 - 214.11, and 214.13. The amendments are being proposed under the authority of the Occupations Code §301.157 and are necessary to clarify existing provisions of the chapter, better organize the sections, and conform the rule text to existing procedures and policies of the Board.

Description of Changes

Proposed amendments to §214.2

The proposed amendments to this section include clarifying language and editorial changes. The proposed changes are not substantive in nature.

Proposed amendments to §214.3

The proposed amendments to this section clarify the Board's processes for the submission of a new vocational nursing education program proposal.

First, the proposed amendments clarify that the process to establish a new vocational nursing education program must be initiated by a letter of intent from the governing entity to the Board office.

Second, if the program's governing entity has nursing programs in other jurisdictions, the submitted program proposal must include evidence that the nursing program's NCLEX-PN® pass rates are at least 80% for the current examination year, as that term is defined in §214.2(19) of this chapter and that the nursing programs hold full approval from the state boards of nursing in the other states and are in good standing.

Third, the individual writing the proposal for a new vocational nursing education program must be the proposed director and must meet the rule's requirements regarding the director's qualifications.

Fourth, a program proposal must be ready for the Board's consideration of approval within one (1) year from the date of receipt of the initial proposal draft in the Board's offices. If the proposal is not ready for the Board's consideration within this time period, the proposal will be considered withdrawn or will be presented to the Board at its next regularly scheduled meeting, with a Staff recommendation of denial/disapproval. Additionally, any proposal without action for one (1) calendar year will be considered withdrawn, and a new proposal application and fee, as set forth in §223.1 of this title (relating to Fees) will be required to begin the new proposal process again.

The proposed amendments also address extension sites/campuses. Under the proposal, an approved vocational nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources must include information in its application evidencing documentation of communication and collaboration with other programs within fifty (50) miles of the extension site and currently signed contracts from clinical affiliating agencies to provide clinical practice settings for students.

Finally, the proposed amendments to this section address vocational nursing education programs outside of Texas' jurisdiction that wish to conduct clinical learning experiences in Texas. Before approval can be granted by the Board to conduct clinical learning experiences in Texas, evidence that the program's NCLEX-PN® examination rate is at least 80% for the current examination year must be provided to the Board.

These proposed changes clarify provisions of the existing rule text and are necessary to conform the rule text to the Board's current procedures and policies.

Proposed amendments to §214.6

The majority of the proposed changes to this section are editorial, clarifying, and non-substantive in nature. The remaining changes to the section are necessary to conform the rule text to the Board's current procedures and policies.

First, the proposed changes address the withdrawal of a program's approval status. Under the proposal, the Board may withdraw approval from a program which fails to meet the Board's requirements or a program may elect to voluntarily close a program. In either case, the program will be removed from the list of Board approved vocational nursing education programs. Further, under the proposal, a program that voluntarily closes or from which approval has been withdrawn by the Board may submit a new proposal after at least twelve (12) calendar months have elapsed from the date the program's voluntary closure is accepted by the Executive Director or from the date of the program's withdrawal of approval by the Board.

For those programs that are required to submit a self study report to the Board, the proposal clarifies that the program must

also provide evaluation data on the effectiveness of corrective measures implemented within one year of the submission of the self-study report to the Board.

Regarding a change in program status, the proposal clarifies that the Board may consider a change in approval status at a regularly scheduled Board meeting for a program on full approval with warning or conditional approval if certain specified circumstances exist.

Proposed amendments to §214.6

The proposed amendments to this section relate to the administration and organization of a vocational nursing education program.

First, the proposal clarifies that the director/coordinator of a program must hold a current, unencumbered license or privilege to practice nursing in Texas. Further, the proposal clarifies that every newly appointed director/coordinator or interim director/coordinator of a vocational nursing education program must attend a scheduled new director/coordinator workshop provided by the Board related to education rules and the role and responsibilities of newly appointed directors/coordinators within one (1) year of his/her hire date in that role. These proposed requirements are necessary to ensure that programs hire qualified and capable individuals to direct the program and to ensure that individuals who are new to the role obtain the necessary information to be successful.

Proposed amendments to §214.7

While the proposed changes to this section significantly re-organize the section, the majority of the existing provisions of the rule still remain. Further, the proposal contains a few clarifying requirements. First, the proposal clarifies that written policies for nursing faculty workload must allow sufficient time for faculty to accomplish those activities related to the teaching-learning process. Second, personnel policies must include position descriptions for all members of the nursing program (including the director/coordinator) outlining the qualifications and responsibilities directly related to the nursing program. Finally, written policies for nursing faculty must include terms of employment, plans for faculty orientation to the institution and to the nursing program, resources and opportunities for faculty development and evaluation of faculty, and Nursing Peer Review, as described in §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections) and 217.20 (relating to Safe Harbor Nursing Peer Review and Whistleblower Protections) of this title.

Proposed amendments to §214.8

The proposed changes to this section relate to a program's Nursing Student Handbook. The proposal clarifies that the Handbook must include policies to ensure students fulfill requirements for obtaining criminal history record information in compliance with the Occupations Code §301.257. Further, the proposal re-iterates that processes must be in place for policy development, implementation, and enforcement. The remaining proposed changes to this section are necessary for consistency with prior changes made to §213.28 (relating to Licensure of Individuals with Criminal History), §213.29 (relating to Fitness to Practice), and §213.27 (relating to Good Professional Character) of this title. These proposed changes are clarifying in nature and are not intended to be substantive.

Proposed amendments to §214.9

This section addresses the program of study. First, the proposal includes an additional reference to Board Education Guideline 3.7.4.a. Using Standardized Examinations and clarifies that this guideline outlines the effective use of standardized examinations as an evaluation of student progress. Second, the proposal clarifies that a major curriculum change includes the addition of tracks or alternate programs of study, including advanced placement or Dual-Credit High School programs that provide educational mobility, and revisions in program hours. Finally, because the current text directs programs to utilize Board Education Guideline 3.7.1.a. in submitting curriculum changes to the Board for approval, the proposal eliminates unnecessary language from the rule of the text, as the guidelines appropriately addresses the necessary components of the proposal. These proposed changes are clarifying in nature and are necessary to conform to the Board's current procedures and policies.

Proposed amendments to §214.10

This section addresses clinical learning experiences. The proposal clarifies that, when a high-fidelity simulation laboratory is used to meet clinical learning objectives, the faculty must be trained in planning and guiding the experience and in debriefing and evaluating students. Further, the proposal clarifies that programs may use up to 50% simulation activities in each clinical course. The proposal further re-iterates that clinical learning experiences must be designed for students to meet clinical objectives in all clinical activities (skills and simulation laboratories and hands-on care).

Proposed amendments to §214.11

The proposed amendments to this section clarify the appropriate use of a skills laboratory. The proposal re-iterates that an appropriately equipped skills laboratory must be provided to accommodate the maximum number of students allowed for the program and to provide a learning environment where students can receive instruction and demonstrate all basic nursing skills. A simulation laboratory may be provided to enhance clinical learning experiences where students can practice nursing care through planned scenarios that mimic real clinical situations.

Proposed amendments to §214.13

The proposed changes to this section are editorial in nature and are not substantive.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that are clear and concise and conform to the Board's current procedures and policies.

There are no anticipated costs of compliance associated with the proposal. The majority of the proposed changes are editorial and organizational in nature. The remainder of the proposed changes clarify or re-iterate existing portions of the rule text. The Board does not anticipate that any of these clarifying provisions will result in new costs of compliance for persons required to comply with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities. As re-

quired by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

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

Request for Public Comment. Comments on this proposal may be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.157 and §301.151.

Section 301.157 addresses the Board's authority to regulate programs of study that prepare individuals to receive initial licenses to practice nursing in Texas. Among other things, this section authorizes the Board to prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; approve schools of nursing and educational programs that meet the Board's requirements; select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and deny or withdraw approval from a school of nursing or educational program that fails to meet the prescribed course of study or other standard under which it sought approval by the Board, fails to meet or main-

tain accreditation with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board, or fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.157 and §301.151.

§214.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Affidavit of Graduation--an official Board form required in the initial licensure process that is signed by the approved nursing program director/coordinator verifying that the applicant has successfully completed all requirements for graduation from an approved vocational nursing program that meets the requirements set forth in §214.9 of this chapter (relating to Program of Study) [containing an approved vocational nursing education program's curriculum components and hours, and a statement verified by the nursing program director/coordinator attesting to an applicant's qualifications for vocational nurse licensure in Texas].

(2) (No change.)

(3) Alternative practice settings--settings providing opportunities for clinical learning experiences, including those whose [although their] primary function is not the delivery of health care.

(4) Approved vocational nursing education program--a Board-approved vocational nursing education program that meets the requirements set forth in §214.9 of this chapter and prepares graduates to provide safe nursing care using concepts identified in the Differentiated Essential Competencies (DECs) [approved by the Texas Board of Nursing].

(5) Articulation--a planned process between two (2) or more educational systems to assist students in making a smooth transition from one (1) level of education to another without duplication in education [learning].

(6) - (9) (No change.)

(10) Clinical learning experiences--faculty-planned and guided learning activities designed to assist students to meet the stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by [a] debriefing and evaluation of student performance. The clinical settings for faculty-supervised [faculty supervised] hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care and rehabilitation facilities; primary care settings; extended care facilities (long-term care and nursing homes);

residential care settings; respite or day care facilities; community or public health agencies; and other settings where actual patients receive nursing care [acute care facilities, extended care facilities, clients' residences, and community agencies].

(11) - (13) (No change.)

(14) Course--organized subject content and related activities, that may include face-to-face and/or online didactic, laboratory, and/or clinical experiences, planned to achieve specific objectives within a given time period.

(15) (No change.)

(16) Declaratory Order of Eligibility--an order issued by the Board pursuant to Texas Occupations Code §301.257, determining the eligibility of an individual for initial licensure as a vocational or registered nurse and setting forth both the basis for potential ineligibility and the Board's determination of [the] disclosed eligibility issues.

(17) - (21) (No change.)

(22) Faculty waiver--a waiver granted by a director or coordinator of a vocational nursing education program to an individual who meets the criteria specified in §214.7(e)(1) - (3) [§217.7(d)(1)] of this chapter.

(23) - (29) (No change.)

(30) Observation experience--a clinical learning experience where a student is assigned to follow a health care professional in a facility or unit and to observe activities within the facility/unit and/or the role of nursing within the facility/unit, but where the student does not participate in hands-on patient/client care.

(31) Pass rate--the percentage of first-time candidates within the [one (1)] examination year, as that term is defined in paragraph (19) of this section, who pass the National Council Licensure Examination for Vocational Nurses (NCLEX-PN®).

(32) - (33) (No change.)

(34) Recommendation--a specific suggestion based upon program assessment that is indirectly related to the rules to which the program must respond but in a method of their choosing.

(35) Requirement--mandatory criterion based on program assessment that is directly related to the rules that must be addressed in the manner prescribed.

(36) (No change.)

(37) Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice[; but it is not a substitute for faculty-supervised patient care].

(38) (No change.)

(39) Supervision--immediate availability of a faculty member or clinical preceptor to coordinate, direct, and observe first-hand [first hand] the practice of students.

(40) - (44) (No change.)

§214.3. *Program Development, Expansion and Closure.*

(a) New Programs.

(1) (No change.)

(2) Proposal to establish a new vocational nursing education program.

(A) An educational unit in nursing within the structure of a school, including a college, university, or career school or college, or a hospital or military setting is eligible to submit a proposal to establish a new vocational nursing education program.

(B) The new vocational nursing education program must be approved/licensed or deemed exempt by the appropriate Texas agency, the THECB or the TWC, as applicable, before approval can be granted by the Board for the program to be implemented. The proposal to establish a new vocational nursing education program may be submitted to the Board at the same time that an application is submitted to the THECB or the TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by the THECB or the TWC. If the governing entity has nursing programs in other jurisdictions, the submitted program proposal must include evidence that the nursing programs' NCLEX-PN® pass rates are at least 80% for the current examination year, as that term is defined in §214.2(19) of this chapter (relating to Definitions), and that the nursing programs hold full approval from the state boards of nursing in the other states and are in good standing.

(C) The process to establish a new vocational nursing education program shall be initiated by a letter of intent from the governing entity to ~~[with]~~ the Board office. A program proposal must be ready for the Board's consideration of approval within one (1) year from the date of receipt of the initial proposal draft in the Board's office. If the proposal is not ready for the Board's consideration within this time period, the proposal will be considered withdrawn or will be presented to the Board at its next regularly scheduled meeting, with a Staff recommendation of denial/disapproval. [one (1) year prior to the anticipated start date of the program.]

(D) The individual writing the proposal for a new vocational nursing education program shall be the proposed director and shall ~~[should hold a current license or privilege to practice as a registered nurse in Texas and should]~~ meet the qualifications for the program director as specified in §214.6(f) of this chapter (relating to Administration and Organization).

~~[(i)]~~ The name and credentials of the author of the proposal must be included in the document.]

~~[(ii)]~~ A qualified director or coordinator must be employed by the program early in the development of the proposal, and in no event shall the director or coordinator be hired later than six (6) months prior to the submission of the proposal to the Board.]

~~[(iii)]~~ The prospective program director must review/revise the proposal and agree with the components of the proposal as being representative of the proposed program that the individual will be responsible for administratively.]

(E) - (G) (No change.)

(H) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal. In order to ensure success of newly approved programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(i) In addition to imposing restrictions and conditions, the Board may also require specific monitoring of newly approved programs that may be [are] high-risk.

(ii) A program may be considered high-risk if it meets one or more of the following criteria, including, but not limited to: unfamiliarity, [inexperience] of the governing entity with ~~[in]~~ nursing education; inexperience of the potential director or coordinator in directing a nursing program; potential for director or faculty turnover; multiple admission cycles per year; or potential for a high attrition rate among students.

(iii) (No change.)

(I) - (K) (No change.)

(L) A proposal without action for one (1) calendar year shall be considered withdrawn, [inactived] and a new proposal application and fee, as set forth in §223.1 of this title (relating to Fees) will be required to begin the new proposal process again.

(M) (No change.)

(3) Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Site/Campus.

(1) Only vocational nursing education programs that have full approval with a current NCLEX-PN® examination pass rate of 80% or better and are in compliance with Board rules are eligible to initiate or modify an extension site/campus.

(2) (No change.)

(3) An approved vocational nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources shall:

(A) (No change.)

(B) Provide information in the application form that evidences:

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

(iv) documentation of communication and collaboration with other programs within fifty (50) [twenty-five (25)] miles of the extension site;

(v) currently signed contracts [commitments] from clinical affiliating agencies to provide clinical practice settings for students;

(vi) - (vii) (No change.)

(viii) a planned schedule for class and clinical learning activities for one (1) year; and

(ix) notification or approval from the governing entity and from other regulatory/accrediting agencies, as required. This includes regional approval of out-of-service extension sites for community colleges.[: and]

~~[(x)]~~ letters of support from clinical affiliating agencies.]

(4) - (7) (No change.)

(c) - (d) (No change.)

(e) Approval of a Vocational Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

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

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency (i.e., the THECB, the TWC), to conduct business in the State of Texas, must be provided ~~[obtained]~~ before approval can be granted by the Board for the program to conduct clinical learning experiences in Texas.

(4) Evidence that the program's NCLEX-PN® examination rate is at least 80% for the current examination year, as that term is defined in §214.2(19) of this chapter (relating to Definitions).

(5) ~~[(4)]~~ The Board may withdraw the approval of any program that fails to maintain the requirements set forth in Board Education Guideline 3.1.1.f. and this section.

§214.4. *Approval.*

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) Initial Approval.

(A) (No change.)

(B) The number of students to be enrolled while the program is on initial approval is determined by the Board, and the requirements will be ~~[are]~~ included in the Board's Order approving the program ~~[initial approval letter]~~.

(C) Change from initial approval status to full approval status cannot occur until the program has demonstrated compliance with this chapter, has met requirements and responded to all recommendations issued by the Board, and the NCLEX-PN® examination pass rate is at least 80% after a full examination year. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(2) (No change.)

(3) Full or initial approval with warning is issued by the Board to a vocational nursing education program that is not meeting the Board's requirements.

(A) (No change.)

(B) Following the survey visit, the program will be given a list of identified areas of concern ~~[deficiencies]~~ and a specified time in which to respond with a set of corrective measures ~~[correct the deficiencies]~~. Further, in order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program opportunity to correct any areas of concern identified by the Board or from findings in the program's self study report ~~[deficiencies]~~.

(A) - (C) (No change.)

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet the Board's requirements within the specified time. A ~~[The]~~ program may also elect to voluntarily close a program, as provided for in subsection (c)(12) of this section. The program shall be removed from the list of Board approved vocational nursing education programs.

(b) (No change.)

(c) Ongoing Approval Procedures. Ongoing approval status is determined biennially by the Board on the basis of information reported or provided in the program's NEPIS and CANEP, NCLEX-PN® examination pass rates, program compliance with this chapter, and other program outcomes. Certificates of Board approval will be mailed to all Board-approved nursing programs biennially in even-numbered years. ~~[pertinent data]~~.

(1) (No change.)

(2) NCLEX-PN® Pass Rates. The annual NCLEX-PN® examination pass rate for each vocational nursing education program is determined by the percentage of first time test-takers who pass the examination during the examination year.

(A) A minimum of eighty ~~[Eighty]~~ percent (80%) of first-time NCLEX-PN® candidates is ~~[are]~~ required to achieve a passing score on the NCLEX-PN® examination during the examination year.

(B) When the passing score of first-time NCLEX-PN® candidates is less than 80% on the examination during the examination year, the nursing program shall submit a Self-Study Report that evaluates factors that may have contributed to the graduates' performance on the examination and a description of the corrective measures to be implemented. The report shall comply with Board Education Guideline 3.2.1.a. Writing a Self-Study Report on Evaluation of Factors that Contributed to the Graduates' Performance on the NCLEX-PN® or NCLEX-RN® Examination. Within one year of the submission of the Self-Study Report to the Board, the program shall provide to Board Staff evaluation data on the effectiveness of corrective measures implemented.

(3) Change in Approval Status. The progressive designation of a change in approval status is not implied by the order of the following listing. A change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by program outcomes, including the NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section.

(A) - (C) (No change.)

(D) The Board may consider a change in approval status at a regularly scheduled Board meeting for a program on full approval with warning or conditional approval ~~[A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting following the end of the examination year] if:~~

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

(E) - (F) (No change.)

(4) - (7) (No change.)

(8) A vocational nursing education program is considered approved by the Board and exempt from Board rules that require ongoing approval as described in Board Education Guideline 3.2.4.a. Nursing Education Programs Accredited by the Accreditation Commission for Education in Nursing ~~[National League for Nursing Accrediting Commission]~~ and/or the Commission on Collegiate Nursing Education-Specific Exemptions from Education Rule Requirements if the program:

(A) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been

determined by the Board to have standards equivalent to the Board's ongoing approval standards; ~~and~~

(B) complies with Board rules from which it is not exempt; and

(C) ~~(B)~~ maintains an acceptable NCLEX-PN® pass rate, as determined by the Board, on the NCLEX-PN® examination.

(9) - (11) (No change.)

(12) A program that voluntarily closes or from which approval has been withdrawn by the Board may submit a new proposal ~~reapply for approval~~. A new proposal may not be submitted to the Board until ~~after~~ at least twelve (12) calendar months have elapsed from the date the program's voluntary closure is accepted by the Executive Director or from the date of the program's ~~of~~ withdrawal of approval by the Board ~~have elapsed~~.

(13) (No change.)

(d) Notice of a change in a program's approval status shall be sent to the director or coordinator and others as determined by the Board. The chief administrative officer of the governing entity shall be notified by the Board when there is a change in approval status of the program.

§214.6. Administration and Organization.

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

(f) Each vocational nursing education program shall be administered by a qualified individual who is accountable for the planning, implementation, and evaluation of the vocational nursing education program. ~~[The director/coordinator shall:]~~

(1) The director/coordinator shall hold an unencumbered ~~a~~ current license or privilege to practice as a registered nurse in the state of Texas.~~;~~

(2) The director/coordinator shall have been actively employed in nursing for the past five (5) years, preferably in administration or teaching, with a minimum of one (1) year teaching experience in a pre-licensure nursing education program.~~;~~

(3) ~~If~~ ~~if~~ the director/or coordinator has not been actively employed in nursing for the past five (5) years, the director's or coordinator's advanced preparation in nursing, nursing education, and nursing administration and prior relevant nursing employment may be taken into consideration by Board Staff in evaluating qualifications for the position.~~;~~

(4) The director/coordinator shall have a degree or equivalent experience that will demonstrate competency and advanced preparation in nursing, education, and administration.~~;~~

(5) The director/coordinator must have had five (5) years of varied nursing experience since graduation from a professional nursing education program.~~;~~

(6) In a fully approved vocational nursing education program, other qualifications may be considered if there is supporting evidence that the candidate has sufficient competencies to fulfill the responsibilities.

(7) ~~[(6)]~~ The ~~the~~ director or coordinator may have responsibilities other than the program, provided that another qualified nursing faculty member is designated to assist with the program management.~~;~~ and

(8) ~~[(7)]~~ A ~~a~~ director or coordinator with responsibilities other than the program shall not have major teaching responsibilities.

(g) When the director/coordinator or of the program changes, the director/coordinator shall submit to the Board office written notification of the change indicating the final date of employment.

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

~~[(4) In a fully approved vocational nursing education program, other qualifications may be considered if there is supporting evidence that the candidate has competencies to fulfill the responsibilities.]~~

(h) A newly appointed director/coordinator or interim director/coordinator of a vocational nursing education program shall attend a ~~the next~~ scheduled new director/coordinator ~~education~~ workshop provided by the Board related to ~~the~~ education rules and the role and responsibilities of newly appointed directors/coordinators within one (1) year of his/her hire date in that role.

(i) - (j) (No change.)

§214.7. Faculty.

(a) Faculty Organization.

(1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.

(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the nursing program. Such participation includes, but is not limited to: the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.

(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives, and evaluation criteria shall be included in the policies for part-time faculty.

(b) ~~[(a)]~~ There shall be a Nursing Faculty Handbook that contains written ~~personnel~~ policies for nursing faculty that are in keeping with accepted educational standards and are consistent with the policies of the governing entity. Nursing policies that differ from those of the governing entity shall be consistent with nursing unit mission and goals (philosophy and outcome).

~~[(1) Nursing policies that differ from those of the governing entity shall be consistent with nursing unit mission and goals (philosophy and outcomes).]~~

(1) ~~[(2)]~~ Written policies concerning workload for the director or coordinator shall allow for sufficient time for administrative responsibilities consistent with §214.6 of this chapter (relating to Administration and Organization). Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.

~~[(3) Faculty policies shall include, but not be limited to: qualifications, responsibilities, performance evaluation criteria, and terms of employment.]~~

~~[(4) Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.]~~

(2) [(5)] Personnel policies shall include position [Position] descriptions for all members of the nursing program (including the director/coordinator) [the director/coordinator and nursing faculty] outlining the qualifications and [their] responsibilities directly related to the nursing program [shall be included in the nursing faculty handbook].

(3) [(6)] Written policies for nursing faculty shall also include: terms of employment, plans for faculty orientation to the institution and to the nursing program, resources and opportunities for faculty development[,] and evaluation of faculty, and Nursing Peer Review, as described in §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections) and §217.20 (relating to Safe Harbor Nursing Peer Review and Whistleblower Protections) of this title.

(4) [(A)] Orientation of new nursing faculty members shall be initiated at the onset of employment.

(5) [(B)] A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs.

(6) [(C)] A variety of means shall be used to evaluate faculty performance such as self, student, peer, and administrative evaluation.

(c) [(b)] A vocational nursing education program shall employ sufficient faculty members with educational preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:

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

(d) [(e)] Faculty Qualifications and Responsibilities.

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

(e) [(d)] Faculty Waivers.

(1) - (4) (No change.)

[(5) The director or coordinator shall submit a sworn (notarized) notification of waiver to the Board.]

(5) [(6)] If an extension of the waiver is needed, the director or coordinator shall petition Board Staff for an extension of the original waiver.

(f) [(e)] Military faculty. Federal laws and regulations regarding licensure of military nursing personnel shall apply to Texas based military faculty members functioning within vocational nursing education programs.

(g) [(f)] Non-nursing faculty are exempt from meeting the faculty qualifications of this chapter as long as the teaching assignments are not nursing content or clinical nursing courses.

(h) [(g)] All nursing faculty, as well as non-nursing faculty, who teach non-clinical nursing courses that are part of the nursing curriculum, e.g., biological, physical, social, behavioral and nursing sciences, including, body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, and human growth and development, shall have sufficient educational preparation verified by the program director/coordinator as appropriate to these areas of teaching responsibility.

(i) [(h)] Non-nursing faculty assigned to teach didactic nursing content shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(j) [(i)] Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(k) [(j)] Faculty shall be responsible for:

(1) - (4) (No change.)

(l) [(k)] Teaching activities shall be coordinated among full-time faculty, part-time faculty, and clinical preceptors.

(m) [(l)] There shall be a minimum of one (1) full-time nursing instructor for the program.

(n) [(m)] A director/coordinator without major teaching or clinical responsibilities shall not be considered a full-time instructor for purposes of meeting the Board's requirements related to having a sufficient number of nursing faculty for a vocational nursing education program.

[(n) Substitute faculty may be employed to meet emergent program needs. Substitute faculty beyond ten (10) consecutive working days and/or on an interim basis shall meet qualifications as specified in subsection (e)(2) of this section.]

[(o) Faculty Organization:]

[(1)] The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.]

[(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the nursing program. Such participation includes, but is not limited to: the initiation and/or change in program policies; personnel policies; curriculum; utilization of affiliating agencies; and program evaluation.]

[(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.]

[(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.]

[(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives, and evaluative criteria shall be included in policies for part-time faculty.]

§214.8. *Students.*

(a) (No change.)

(b) A program must seek approval prior to an increase in enrollment of twenty-five percent (25%) or greater by headcount in one (1) academic year for each nursing program offered. The program must notify Board Staff four (4) months prior to the anticipated increase in enrollment. The Executive Director shall have the authority to approve a requested increase in enrollment on behalf of the Board. When determining whether to approve a request for an increase in enrollment under this rule, the Executive Director and/or the Board shall consider:

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

(3) the effect of the change of enrollment on faculty workload;

(4) - (6) (No change.)

(c) (No change.)

(d) The program shall have a Nursing Student Handbook with well-defined, written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, [and] graduation policies, and policies to ensure students fulfill requirements for obtaining criminal history record information

as set forth in the Occupations Code §301.257. Processes shall be in place for policy development, implementation, and enforcement. ~~[that shall be developed, implemented, and enforced.]~~

(1) - (4) (No change.)

(e) Reasons for dismissal from the program shall be clearly stated in written nursing student policies and shall address ~~[include any demonstration of the following, including, but not limited to]:~~

(1) ~~behavior evidencing [evidence of] actual or potential harm to patients, clients, or the public;~~

(2) ~~criminal behavior that could affect licensure, as set forth in §213.28 (relating to Licensure of Individuals with Criminal History) of this title [whether violent or non-violent, directed against persons, property or public order and decency];~~

(3) ~~current fitness to practice nursing, as set forth in §213.29 (relating to Fitness to Practice) of this title [intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for a substance use disorder, mental illness, or diminished mental capacity]; and~~

(4) ~~[the lack of] good professional character, as set forth in §213.27 (relating to Good Professional Character) of this title [as evidenced by a single incident or an integrated pattern of personal, academic and/or occupational behaviors which indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to: behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity].~~

(f) - (j) (No change.)

§214.9. *Program of Study.*

(a) (No change.)

(b) The faculty shall be responsible for the development, implementation, and evaluation of the curriculum based upon the following guidelines:

(1) (No change.)

(2) Instruction shall be provided in nursing roles; biological, physical, social, behavioral, and nursing sciences, including body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, human growth and development, vocational nursing scope of practice ~~[adjustments]~~, and nursing skills. Courses may be integrated or separate.

(3) (No change.)

(c) Instruction shall include, but not be limited to: organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, nursing skills laboratory instruction and demonstration, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.

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

(4) Clinical practice learning experiences shall include actual hours of practice in nursing skills and computer laboratories; simulated clinical experiences; faculty supervised hands-on clinical care; clinical conferences; debriefing; and observation experiences. Observation experiences provide supplemental learning experiences that meet specific learning objectives.

(5) - (9) (No change.)

(d) - (e) (No change.)

(f) The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence, and integration of learning.

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

(4) Students shall have sufficient opportunities in simulated or clinical settings to develop ~~[manual]~~ technical skills, using contemporary technologies, essential for safe, effective nursing practice.

(5) (No change.)

(g) (No change.)

(h) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective, and psychomotor achievements in course/clinical objectives, according to Board Education Guideline 3.7.3.a. Student Evaluation Methods and Tools. Board Education Guideline 3.7.4.a. Using Standardized Examinations outlines the effective use of standardized examinations as an evaluation of student progress.

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

(i) Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board Education Guideline 3.7.1.a. Proposals for Curriculum Changes. The two (2) types of curriculum changes are:

(1) (No change.)

(2) Major curriculum changes requiring Board staff approval prior to implementation, which may include:

(A) (No change.)

(B) The addition of tracks or alternate programs of study, including advanced placement or Dual-Credit High School programs that provide educational mobility;

~~(C) [(B)]~~ Revisions in program hours; and

~~(D) [(C)]~~ Addition/reduction of course(s) in the program of study.

(j) (No change.)

(k) Vocational nursing education programs planning [that have full approval status and are undergoing] major curriculum changes shall submit a curriculum change [an abbreviated] proposal, as outlined in Board Education Guideline 3.7.1.a., to the Board office for approval at least four (4) months prior to implementation. ~~[The abbreviated proposal shall contain at least the following:]~~

~~{(1) new and old philosophy/mission; major concepts, program objectives/outcomes, course objectives/outcomes;}~~

~~{(2) new and old curriculum plans;}~~

~~{(3) rationale for the curriculum changes;}~~

~~{(4) clinical evaluation tools for each clinical course; and}~~

~~{(5) additional information, as requested, in order to provide clarity for Board Staff.}~~

~~{(4) Vocational nursing education programs not having full approval status; but proposing a major curriculum change; shall submit a full curriculum change proposal, as outlined in Board Education Guideline 3.7.1.a, to the Board office and meet the requirements as outlined in subsection (i) of this section. Vocational nursing education programs not having full approval status are not eligible to submit for Board approval a proposal for a new nursing education program until the program's status has been restored to full approval status by the Board.}~~

(l) ~~[(m)]~~ All vocational nursing education programs implementing any curriculum change shall submit to Board Staff an evaluation of the outcomes of the implemented curriculum change through the first graduating class under the new curriculum.

§214.10. *Clinical Learning Experiences.*

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

(e) Clinical learning experiences shall include the administration of medications, health promotion and preventive aspects, nursing care of persons across [throughout] the life span with acute and chronic illnesses, and rehabilitative care.

(1) Students shall participate in instructor-supervised [instructor supervised] patient teaching.

(2) Students shall also be provided opportunities for participation in clinical conferences/debriefing.

(3) When a high-fidelity simulation laboratory is used to meet clinical learning objectives, the faculty shall be trained in planning and guiding the experience and in debriefing and evaluating students. Programs may use up to 50% simulation activities in each clinical course. [Simulated laboratory experiences may also be utilized as a teaching strategy in classroom and clinical settings to meet objectives and may be counted as either classroom or clinical hours for the purpose of calculating the hours in the curriculum.]

(f) (No change.)

(g) The following ratios only apply to clinical learning experiences involving direct patient care:

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

(3) Clinical learning experiences shall be designed for students to meet clinical objectives in all clinical activities (skills and simulation laboratories and hands-on care).

(4) ~~[(3)]~~ The faculty member shall supervise an assigned [that] group in [only] one (1) facility at a time, unless some portion or all of the clinical group are assigned to observation experiences or to preceptors in additional settings.

(5) ~~[(4)]~~ Direct faculty supervision is not required for an observation experience.

(h) Clinical preceptors may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing ~~or after a student has received clinical and didactic instruction in the basic areas of nursing for the related course or specific learning experience~~.

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

(4) The preceptor shall be responsible for the clinical learning experiences of no more than two (2) students at a time ~~[per clinical group]~~.

(i) - (k) (No change.)

§214.11. *Facilities, Resources, and Services.*

(a) (No change.)

(b) An appropriately equipped skills laboratory shall be provided to accommodate the maximum number of students allowed for the program and to provide a learning environment where students can receive instruction and demonstrate all basic nursing skills. A simulation laboratory may be provided to enhance clinical learning experiences where students can practice nursing care through planned scenarios that mimic real clinical situations.

(1) The laboratories [laboratory] shall be equipped with hot and cold running water.

(2) The laboratories [laboratory] shall have adequate storage for equipment and supplies.

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

§214.13. *Total Program Evaluation.*

(a) There shall be a written plan for the systematic evaluation of the effectiveness of the total program. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, and indicators (benchmarks) of program and instructional effectiveness. The following broad areas shall be periodically evaluated:

(1) - (4) (No change.)

(5) affiliating agencies and clinical learning activities, including simulation experiences;

(6) - (10) (No change.)

(b) - (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 May 21, 2018.

TRD-201802222

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: July 1, 2018

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



CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §§215.2 - 215.4, 215.6 - 215.11, 215.13

Introduction

The Texas Board of Nursing (Board) proposes amendments to §§215.2 - 215.4, 215.6 - 215.11, and 215.13. The amendments are being proposed under the authority of the Occupations Code §301.157 and are necessary to clarify existing provisions of the chapter, better organize the sections, and conform the rule text to existing procedures and policies of the Board.

Description of Changes

Proposed amendments to §215.2

The proposed amendments to this section include clarifying language and editorial changes. The proposed changes are not substantive in nature.

Proposed amendments to §215.3

The proposed amendments to this section clarify the Board's processes for the submission of a new professional nursing education program proposal.

First, the proposed amendments clarify that the process to establish a new professional nursing education program must be initiated by a letter of intent from the governing entity to the Board office.

Second, if the program's governing entity has nursing programs in other jurisdictions, the submitted program proposal must include evidence that the nursing program's NCLEX-PN® pass rates are at least 80% for the current examination year and that the nursing programs hold full approval from the state boards of nursing in the other states and are in good standing.

Third, the individual writing the proposal for a new professional nursing education program must be the proposed director and must meet the rule's requirements regarding the director's qualifications.

Fourth, a program proposal must be ready for the Board's consideration of approval within one (1) year from the date of receipt of the initial proposal draft in the Board's offices. If the proposal is not ready for the Board's consideration within this time period, the proposal will be considered withdrawn or will be presented to the Board at its next regularly scheduled meeting, with a Staff recommendation of denial/disapproval. Additionally, any proposal without action for one (1) calendar year will be considered withdrawn, and a new proposal application and fee, as set forth in §223.1 of this title (relating to Fees) will be required to begin the new proposal process again.

The proposed amendments also address extension sites/campuses. Under the proposal, an approved professional nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources must include information in its application evidencing documentation of communication and collaboration with other programs within fifty (50) miles of the extension site and currently signed contracts from clinical affiliating agencies to provide clinical practice settings for students.

Finally, the proposed amendments to this section address professional nursing education programs outside of Texas' jurisdiction that wish to conduct clinical learning experiences in Texas. Before approval can be granted by the Board to conduct clinical learning experiences in Texas, evidence that the program's NCLEX-PN® examination rate is at least 80% for the current examination year must be provided to the Board.

These proposed changes clarify provisions of the existing rule text and are necessary to conform the rule text to the Board's current procedures and policies.

Proposed amendments to §215.6

The majority of the proposed changes to this section are editorial, clarifying, and non-substantive in nature. The remaining changes to the section are necessary to conform the rule text to the Board's current procedures and policies.

First, the proposed changes address the withdrawal of a program's approval status. Under the proposal, the Board may withdraw approval from a program which fails to meet the Board's requirements or a program may elect to voluntarily close a program. In either case, the program will be removed from the list of Board approved vocational nursing education programs. Further, under the proposal, a program that voluntarily closes or from which approval has been withdrawn by the Board may submit a new proposal after at least twelve (12) calendar months have elapsed from the date the program's voluntary closure is accepted by the Executive Director or from the date of the program's withdrawal of approval by the Board.

For those programs that are required to submit a self study report to the Board, the proposal clarifies that the program must also provide evaluation data on the effectiveness of corrective

measures implemented within one year of the submission of the self-study report to the Board.

Regarding a change in program status, the proposal clarifies that the Board may consider a change in approval status at a regularly scheduled Board meeting for a program on full approval with warning or conditional approval if certain specified circumstances exist.

Proposed amendments to §215.6

The proposed amendments to this section relate to the administration and organization of a professional nursing education program.

First, the proposal clarifies that the dean/director of a program must hold a current, unencumbered license or privilege to practice nursing in Texas. Further, the proposal clarifies that every newly appointed dean/director or interim dean/director of a professional nursing education program must attend a scheduled new dean/director workshop provided by the Board related to education rules and the role and responsibilities of newly appointed deans/directors within one (1) year of his/her hire date in that role. These proposed requirements are necessary to ensure that programs hire qualified and capable individuals to direct the program and to ensure that individuals who are new to the role obtain the necessary information to be successful.

Proposed amendments to §215.7

While the proposed changes to this section significantly re-organize the section, the majority of the existing provisions of the rule still remain. Further, the proposal contains a few clarifying requirements. First, the proposal clarifies that written policies for nursing faculty workload must allow sufficient time for faculty to accomplish those activities related to the teaching-learning process. Second, personnel policies must include position descriptions for all members of the nursing program (including the dean/director) outlining the qualifications and responsibilities directly related to the nursing program. Finally, written policies for nursing faculty must include terms of employment, plans for faculty orientation to the institution and to the nursing program, resources and opportunities for faculty development and evaluation of faculty, and Nursing Peer Review, as described in §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections) and §217.20 (relating to Safe Harbor Nursing Peer Review and Whistleblower Protections) of this title.

Proposed amendments to §215.8

The proposed changes to this section relate to a program's Nursing Student Handbook. The proposal clarifies that the Handbook must include policies to ensure students fulfill requirements for obtaining criminal history record information in compliance with the Occupations Code §301.257. Further, the proposal reiterates that processes must be in place for policy development, implementation, and enforcement. The remaining proposed changes to this section are necessary for consistency with prior changes made to §213.28 (relating to Licensure of Individuals with Criminal History), §213.29 (relating to Fitness to Practice), and §213.27 (relating to Good Professional Character) of this title. These proposed changes are clarifying in nature and are not intended to be substantive.

Proposed amendments to §215.9

This section addresses the program of study. First, the proposal provides clarification regarding the selection and organization of the learning experiences in the curriculum. The proposal reiter-

ates that the curriculum must provide continuity, sequence, and integration of learning. Further, the learning experiences must provide for progressive development of values, knowledge, judgment, and skills. Didactic learning experiences must be provided either prior to or concurrent (at the same time) with the related clinical learning experiences. Clinical learning experiences must be sufficient in quantity and quality to provide opportunities for students to achieve the stated outcomes. Students must have sufficient opportunities in simulated or clinical settings to develop technical skills, using contemporary technologies, essential for safe, effective nursing practice. Learning opportunities must assist students to develop communication and interpersonal skills.

Second, the proposal clarifies that a major curriculum change includes the addition of transition course(s), tracks/alternative programs of study, including MEEP and Dual-Credit High School programs, that provide educational mobility.

Finally, because the current text directs programs to utilize Board Education Guideline 3.7.1.a. in submitting curriculum changes to the Board for approval, the proposal eliminates unnecessary language from the rule of the text, as the guidelines appropriately addresses the necessary components of the proposal. These proposed changes are clarifying in nature and are necessary to conform to the Board's current procedures and policies.

Proposed amendments to §215.10

This section addresses clinical learning experiences. The proposal clarifies that when a high-fidelity simulation laboratory is used to meet clinical learning objectives, the faculty must be trained in planning and guiding the experience and in debriefing and evaluating students. Further, the proposal clarifies that programs may use up to 50% simulation activities in each clinical course. The proposal further reiterates that clinical learning experiences must be designed for students to meet clinical objectives in all clinical activities (skills and simulation laboratories and hands-on care).

Proposed amendments to §215.11

The proposed amendments to this section clarify the appropriate use of a skills laboratory. The proposal reiterates that an appropriately equipped skills laboratory must be provided to accommodate the maximum number of students allowed for the program and to provide a learning environment where students can receive instruction and demonstrate all basic nursing skills. A simulation laboratory may be provided to enhance clinical learning experiences where students can practice nursing care through planned scenarios that mimic real clinical situations.

Proposed amendments to §215.13

The proposed changes to this section are editorial in nature and are not substantive.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that are clear and concise and conform to the Board's current procedures and policies.

There are no anticipated costs of compliance associated with the proposal. The majority of the proposed changes are editorial

and organizational in nature. The remainder of the proposed changes clarify or reiterate existing portions of the rule text. The Board does not anticipate that any of these clarifying provisions will result in new costs of compliance for persons required to comply with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses and Rural Communities. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

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

Request for Public Comment. Comments on this proposal may be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.157 and §301.151.

Section 301.157 addresses the Board's authority to regulate programs of study that prepare individuals to receive initial licenses to practice nursing in Texas. Among other things, this section authorizes the Board to prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; approve schools of nursing and ed-

educational programs that meet the Board's requirements; select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and deny or withdraw approval from a school of nursing or educational program that fails to meet the prescribed course of study or other standard under which it sought approval by the Board, fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board, or fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the

Occupations Code §301.157 and §301.151.

§215.2. *Definitions.*

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Affidavit of Graduation--an official Board form required in the initial licensure process that is signed by the approved nursing program dean/director verifying that the applicant has successfully completed all requirements for graduation from an approved professional nursing program that meets the requirements set forth in §215.9 of this chapter (relating to Program of Study) [containing an approved professional nursing education program's curriculum components and hours, and a statement verified by the nursing program dean/director attesting to an applicant's qualifications for registered nurse licensure in Texas].

(2) (No change.)

(3) Alternative practice settings--settings providing opportunities for clinical learning experiences, including those whose [although their] primary function is not the delivery of health care.

(4) Approved vocational nursing education program--a Board-approved professional nursing education program that meets the requirements set forth in §215.9 of this chapter and prepares graduates to provide safe nursing care using concepts identified in the Differentiated Essential Competencies (DECs) [approved by the Texas Board of Nursing].

(5) Articulation--a planned process between two (2) or more educational systems to assist students in making a smooth transition from one (1) level of education to another without duplication in education [learning].

(6) - (8) (No change.)

(9) Classroom instruction hours--hours allocated to didactic instruction and testing in nursing and non-nursing Board-required courses and content.

(10) [(9)] Clinical learning experiences--faculty-planned and guided learning activities designed to assist students to meet the

stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations and in associated clinical conferences; in nursing skills and computer laboratories; and in simulated clinical settings, including high-fidelity, where the activities involve using planned objectives in a realistic patient scenario guided by trained faculty and followed by [a] debriefing and evaluation of student performance. The clinical settings for faculty-supervised [~~faculty supervised~~] hands-on patient care include a variety of affiliating agencies or clinical practice settings, including, but not limited to: acute care and rehabilitation facilities; primary care settings; extended care facilities (long-term care and nursing homes); residential care settings; respite or day care facilities; community or public health agencies; and other settings where actual patients receive nursing care [~~acute care facilities; extended care facilities; clients' residences; and community agencies~~].

(11) [(10)] Clinical preceptor--a registered nurse who meets the requirements in §215.10(j)(6) of this chapter (relating to Clinical Learning Experiences), who is not employed as a faculty member by the governing entity, and who directly supervises clinical learning experiences for no more than two (2) students. A clinical preceptor assists in the evaluation of the student during the experiences and in acclimating the student to the role of nurse. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the governing entity, preceptor, and affiliating agency (as applicable).

(12) [(11)] Clinical teaching assistant--a registered nurse licensed in Texas, who is employed to assist in the clinical area and work under the supervision of a Master's or Doctorally prepared nursing faculty member and who meets the requirements of §215.10(j)(8) of this chapter.

(13) [(12)] Conceptual framework--theories or concepts giving structure to the curriculum and guiding faculty in making decisions about curriculum development, implementation, and evaluation.

(14) [(13)] Correlated theory and clinical practice--didactic and clinical experiences that have a reciprocal relationship or mutually complement each other.

(15) [(14)] Course--organized subject content and related activities, that may include face-to-face and/or online didactic, laboratory, and/or clinical experiences, planned to achieve specific objectives within a given time period.

(16) [(15)] Curriculum--course offerings, which in aggregate, make up the total learning activities in a program of study.

(17) [(16)] Dean/director--a registered nurse who is accountable for administering a professional nursing education program, who meets the requirements as stated in §215.6(f) of this chapter (relating to Administration and Organization), and is approved by the Board.

(18) [(17)] Declaratory Order of Eligibility--an order issued by the Board pursuant to Texas Occupations Code §301.257, determining the eligibility of an individual for initial licensure as a vocational [~~professional~~] or registered nurse and setting forth both the basis for potential ineligibility and the Board's determination of [the] disclosed eligibility issues.

(19) [(18)] Differentiated Essential Competencies (DECs)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational*

[Professional] (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010 (DECs).

(20) [(19)] Examination year--the period beginning October 1 and ending September 30 used for the purposes of determining a professional nursing education program's annual NCLEX-RN® examination pass rate.

(21) [(20)] Extension site/campus--a location other than the program's main campus where a portion or all of the curriculum is provided.

(22) [(21)] Faculty member--an individual employed to teach in the professional nursing education program who meets the requirements as stated in §215.7 of this chapter (relating to Faculty).

(23) [(22)] Faculty waiver--a waiver granted by a dean or director of a professional nursing education program to an individual who meets the criteria specified in §215.7(e)(1) - (3) [§217(d)(1)] of this chapter.

(24) [(23)] Governing entity--the body with administrative and operational authority over a Board-approved professional nursing education program.

(25) [(24)] Health care professional--an individual other than a registered nurse who holds at least a bachelor's degree in the health care field, including, but not limited to: a respiratory therapist, physical therapist, occupational therapist, dietitian, pharmacist, physician, social worker, and psychologist.

(26) [(25)] MEEP (Multiple Entry-Exit Program)--an exit option which is a part of a professional nursing education program designed for students to complete course work and apply to take the NCLEX-PN® examination after they have successfully met all requirements needed for the examination.

(27) Mobility--the ability to advance without educational barriers.

(28) [(26)] NEPIS (Nursing Education Program Information Survey)--a document required by the Board to be submitted by the professional nursing education program dean/director to provide annual workforce data.

(29) [(27)] Non-nursing faculty--instructors who teach non-nursing content, such as pharmacology, pathophysiology, research, management and statistics, and who have educational preparation appropriate to the assigned teaching responsibilities.

(30) [(28)] Objectives/Outcomes--expected student behaviors that are attainable and measurable.

(A) - (C) (No change.)

(31) [(29)] Observation experience--a clinical learning experience where a student is assigned to follow a health care professional in a facility or unit and to observe activities within the facility/unit and/or the role of nursing within the facility/unit, but where the student does not participate in hands-on patient/client care.

(32) [(30)] Pass rate--the percentage of first-time candidates within the [one (1)] examination year, as that term is defined in paragraph (20) of this section, who pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN®).

(33) [(31)] Philosophy/Mission--statement of concepts expressing fundamental values and beliefs as they apply to nursing education and practice and upon which the curriculum is based.

(34) [(32)] Professional Nursing Education Program--an education unit that offers courses and learning experiences preparing

graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN® examination, often referred to as a pre-licensure nursing program. Types of pre-licensure professional nursing education programs:

(A) Associate degree nursing education program--a program leading to an associate degree in nursing conducted by an education unit in nursing within the structure of a public institution of higher education or a private or independent institution of higher education, as defined in Texas Education Code §61.003; a private postsecondary educational institution, as defined in Texas Education Code §61.302; or a career school or college, as defined in Texas Education Code §132.001 [or private college or university] authorized to grant associate degrees.

(B) Baccalaureate degree nursing education program--a program leading to a bachelor's degree in nursing conducted by an education unit in nursing which is a part of a public institution of higher education or a private or independent institution of higher education, as defined in Texas Education Code §61.003; a private postsecondary educational institution, as defined in Texas Education Code §61.302; or a career school or college, as defined in Texas Education Code §132.001 [or private college or university] authorized to grant baccalaureate degrees.

(C) Master's degree pre-licensure nursing education program--a program leading to a master's degree, which is an individual's first professional degree in nursing, and conducted by an education unit in nursing within the structure of a college or university authorized to grant graduate degrees.

(D) (No change.)

(35) [(33)] Program of study--the courses and learning experiences that constitute the requirements for completion of a professional nursing education program.

(36) [(34)] Recommendation--a specific suggestion based upon program assessment that is indirectly related to the rules to which the program must respond but in a method of their choosing.

(37) [(35)] Requirement--mandatory criterion based upon program assessment that is directly related to the rules that must be addressed in the manner prescribed.

(38) [(36)] Shall--denotes mandatory requirements.

(39) [(37)] Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice[; but it is not a substitute for faculty-supervised patient care].

(40) [(38)] Staff--employees of the Texas Board of Nursing.

(41) [(39)] Supervision--immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe first hand the practice of students.

(42) [(40)] Survey visit--an on-site visit to a professional nursing education program by a Board representative. The purpose of the visit is to evaluate the program of study by gathering data to determine whether the program is in compliance with Board requirements.

(43) [(41)] Systematic approach--the organized nursing process approach that provides individualized, goal-directed nursing care whereby the registered nurse engages in:

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

(44) [(42)] Texas Higher Education Coordinating Board (THECB)--the state agency described in Texas Education Code, Title 3, Subtitle B, Chapter 61.

(45) [(43)] Texas Workforce Commission (TWC)--the state agency described in Texas Labor Code, Title 4, Subtitle B, Chapter 301.

§215.3. Program Development, Expansion, and Closure.

(a) New Programs.

(1) (No change.)

(2) Proposal to establish a new professional nursing education program.

(A) The proposal to establish a new professional nursing education program may be submitted by:

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

(B) The new professional nursing education program must be approved/licensed or deemed exempt by the appropriate Texas agency, the THECB, or the TWC, as applicable, before approval can be granted by the Board for the program to be implemented. The proposal to establish a new professional nursing education program may be submitted to the Board at the same time that an application is submitted to the THECB or the TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by the THECB or the TWC. If the governing entity has nursing programs in other jurisdictions, the submitted program proposal must include evidence that the nursing programs' NCLEX-RN® pass rates are at least 80% for the current examination year, as that term is defined in §215.2(20) of this chapter (relating to Definitions), and that the nursing programs hold full approval from the state boards of nursing in the other states and are in good standing.

(C) The process to establish a new professional nursing education program shall be initiated by a letter of intent from the governing entity to [with] the Board office. A program proposal must be ready for the Board's consideration of approval within one (1) year from the date of receipt of the initial proposal draft in the Board's office. If the proposal is not ready for the Board's consideration within this time period, the proposal will be considered withdrawn or will be presented to the Board at its next regularly scheduled meeting, with a Staff recommendation of denial/disapproval. [one (1) year prior to the anticipated start date of the program.]

(D) The individual writing the proposal for a new professional nursing education program shall be the proposed director and shall [should hold a current license or privilege to practice as a registered nurse in Texas and should] meet the qualifications for the program director as specified in §215.6(f) [§215-6] of this chapter (relating to Administration and Organization).

~~[(i)]~~ The name and credentials of the author of the proposal must be included in the document.]

~~[(ii)]~~ A qualified dean or director must be employed by the program early in the development of the proposal, and in no event shall the dean or director be hired later than six (6) months prior to the submission of the proposal to the Board.]

~~[(iii)]~~ The prospective dean/program director must review/revise the proposal and agree with the components of the

proposal as being representative of the proposed program that the individual will be responsible for administratively.]

(E) - (H) (No change.)

(I) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal. In order to ensure success of newly approved programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(i) In addition to imposing restrictions and conditions, the Board may also require specific monitoring of newly approved programs that may be [are] high-risk.

(ii) A program may be considered high-risk if it meets one or more of the following criteria, including, but not limited to: unfamiliarity [inexperience] of the governing entity with [the] nursing education; inexperience of the potential dean or director in directing a nursing program; potential for director or faculty turnover; multiple admission cycles per year; or potential for a high attrition rate among students.

(iii) (No change.)

(J) - (L) (No change.)

(M) A proposal without action for one (1) calendar year shall be considered withdrawn, [inactivated] and a new proposal application and fee, as set forth in §223.1 of this title (relating to Fees) will be required to begin the new proposal process again.

(N) (No change.)

(3) (No change.)

(b) Extension Site/Campus.

(1) Only professional nursing education programs that have full approval with a current NCLEX-RN® examination pass rate of 80% or better and are in compliance with Board rules are eligible to initiate or modify an extension site/campus.

(2) (No change.)

(3) An approved professional nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources shall:

(A) (No change.)

(B) Provide information in the application form that evidences:

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

(iv) documentation of communication and collaboration with other programs within fifty (50) [twenty-five (25)] miles of the extension site;

(v) currently signed contracts [signed commitments] from clinical affiliating agencies to provide clinical practice settings for students;

(vi) - (vii) (No change.)

(viii) a planned schedule for class and clinical learning activities for one (1) year; and

(ix) notification or approval from the governing entity and from other regulatory/accrediting agencies, as required. This

includes regional approval of out-of-service extension sites for public colleges. ~~and~~

~~letters of support from clinical affiliating agencies.~~

(4) - (6) (No change.)

(c) (No change.)

(d) Closing a Program.

(1) - (6) (No change.)

(e) Approval of a Professional Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

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

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency, (i.e., the THECB, the TWC) to conduct business in the State of Texas, must be provided [obtained] before approval can be granted by the Board for the program to conduct clinical learning experiences in Texas.

(4) Evidence that the program's NCLEX-RN® examination rate is at least 80% for the current examination year, as that term is defined in §215.2(20) of this chapter (relating to Definitions).

(5) ~~[(4)]~~ The Board may withdraw the approval of any program that fails to maintain the requirements set forth in Board Education Guideline 3.1.1.f. and this section.

§215.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) Initial Approval.

(A) (No change.)

(B) The number of students to be enrolled while the program is on initial approval is determined by the Board, and the requirements will be [are] included in the Board's Order approving the program [initial approval letter].

(C) Change from initial approval status to full approval status cannot occur until the program has demonstrated compliance with this chapter, has met requirements and responded to all recommendations issued by the Board, and the NCLEX-RN® examination pass rate is at least 80% after a full examination year. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(2) (No change.)

(3) Full or initial approval with warning is issued by the Board to a professional nursing education program that is not meeting the Board's requirements.

(A) (No change.)

(B) Following the survey visit, the program will be given a list of identified areas of concern ~~[deficiencies]~~ and a specified time in which to respond with a set of corrective measures ~~[correct the deficiencies]~~. Further, in order to ensure the continuing success of the

program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program opportunity to correct any areas of concern identified by the Board or from findings in the program's self study report [deficiencies].

(A) - (C) (No change.)

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet the Board's requirements within the specified time. A program may also elect to voluntarily close a program, as provided for in subsection (c)(12) of this section. The program shall be removed from the list of Board-approved professional nursing education programs.

(6) (No change.)

(b) (No change.)

(c) Ongoing Approval Procedures. Ongoing approval status is determined biennially by the Board on the basis of information reported or provided in the program's NEPIS and CANEP, NCLEX-RN® examination pass rates, program compliance with this chapter, and other program outcomes. Certificates of Board approval will be mailed to all Board-approved nursing programs biennially in even-numbered years. ~~[pertinent data.]~~

(1) (No change.)

(2) NCLEX-RN® Pass Rates. The annual NCLEX-RN® [NCLEX] examination pass rate for each professional nursing education program is determined by the percentage of first time test-takers who pass the examination during the examination year.

(A) A minimum of eighty [Eighty] percent (80%) of first-time NCLEX-RN® candidates is [are] required to achieve a passing score on the NCLEX-RN® examination during the examination year.

(B) When the passing score of first-time NCLEX-RN® candidates is less than 80% on the examination during the examination year, the nursing program shall submit a Self-Study Report that evaluates factors that may have contributed to the graduates' performance on the NCLEX-RN® examination and a description of the corrective measures to be implemented. The report shall comply with Board Education Guideline 3.2.1.a. Writing a Self-Study Report on Evaluation of Factors that Contributed to the Graduates' Performance on the NCLEX-PN® or NCLEX-RN® Examination. Within one year of the submission of the Self-Study Report to the Board, the program shall provide to Board Staff evaluation data on the effectiveness of corrective measures implemented.

(3) Change in Approval Status. The progressive designation of a change in approval status is not implied by the order of the following listing. A change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by program outcomes, including the NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section.

(A) - (C) (No change.)

(D) The Board may consider a change in approval status at a regularly scheduled Board meeting for a program on full approval with warning or conditional approval [A program issued a warning or placed on conditional approval status may request a review of the pro-

gram's approval status by the Board at a regularly scheduled meeting following the end of the examination year] if:

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

(E) The Board may, in its discretion, change the approval status of a program on full approval with warning to full approval, to full approval with restrictions or conditions, or impose a monitoring plan. The Board may restrict enrollment [enrollments].

(F) The Board may change the approval status of a program on conditional approval to full approval, full approval with restrictions or conditions, full approval with warning, or impose a monitoring plan. The Board may restrict enrollment [enrollments].

(4) - (7) (No change.)

(8) A professional nursing education program is considered approved by the Board and exempt from Board rules that require ongoing approval as described in Board Education Guideline 3.2.4.a. Nursing Education Programs Accredited by the Accreditation Commission for Education in Nursing [National League for Nursing Accrediting Commission] and/or the Commission on Collegiate Nursing Education-Specific [Education - Specific] Exemptions from Education Rule Requirements if the program:

(A) is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; ~~and~~

(B) complies with Board rules from which it is not exempt; and

(C) [~~B~~] maintains an acceptable NCLEX-RN® pass rate, as determined by the Board, on the NCLEX-RN® examination.

(9) - (11) (No change.)

(12) A program that voluntarily closes or from which approval has been withdrawn by the Board may submit a new proposal [reapply for approval]. A new proposal may not be submitted to the Board until [after] at least twelve (12) calendar months have elapsed from the date the program's voluntary closure is accepted by the Executive Director or [of] from the date of the program's withdrawal of approval by the Board [have elapsed].

(13) (No change.)

(d) Notice of a change in a program's approval status shall be sent to the dean or director and others as determined by the Board. The chief administrative officer of the governing entity shall be notified when there is a change of approval status of the program.

§215.6. Administration and Organization.

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

(f) Each professional nursing education program shall be administered by a qualified individual who is accountable for the planning, implementation, and evaluation of the professional nursing education program. The dean or director shall:

(1) hold an unencumbered [a] current license or privilege to practice as a registered nurse in the state of Texas;

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

(4) have a minimum of two (2) [~~three~~ (3)] years teaching experience in a professional nursing education program;

(5) - (6) (No change.)

(g) In a fully approved professional nursing education program, other qualifications may be considered if there is supporting ev-

idence that the candidate has sufficient competencies to fulfill the responsibilities.

(h) [~~g~~] When the dean/director of the program changes, the dean/director shall submit to the Board office written notification of the change indicating the final date of employment.

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

[(4) In a fully approved professional nursing education program, other qualifications may be considered if there is supporting evidence that the candidate has the competencies to fulfill the responsibilities.]

(i) [(h)] A newly appointed dean/director or interim dean/director of a professional nursing education program shall attend a [the next] scheduled new dean/director orientation [education] workshop provided by the Board related to [the] education rules and the role and responsibilities of newly appointed deans/directors within one (1) year of his/her hire date in that role.

(j) [(i)] The dean/director shall have the authority to direct the professional nursing education program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, dismissal of students, and enforcement of student policies. Additional responsibilities include, but are not limited to:

(1) - (4) (No change.)

(k) [(j)] The dean or director of the nursing program shall notify Board Staff immediately when there is a change in the name of the professional nursing education program or the governing entity, or when there are changes in the contact information.

§215.7. Faculty.

(a) Faculty Organization.

(1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.

(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the nursing program. Such participation includes, but is not limited to: the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.

(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives, and evaluation criteria shall be included in the policies for part-time faculty.

(b) [(a)] There shall be a Nursing Faculty Handbook that contains written [personnel] policies for nursing faculty that are in keeping with accepted educational standards and are consistent with the policies of the governing entity. Nursing policies that differ from those of the governing entity shall be consistent with nursing unit mission and goals (philosophy and outcome).

[(1) Nursing policies that differ from those of the governing entity shall be consistent with nursing unit mission and goals (philosophy and outcomes).]

(1) [(2)] Written policies concerning workload for the [dean or director] director or coordinator shall allow for sufficient time for administrative responsibilities consistent with §215.6 of this chapter (relating to Administration and Organization). Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.

[(3) Faculty policies shall include, but not be limited to: qualifications; responsibilities; performance evaluation criteria; and terms of employment.]

[(4) Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.]

(2) [(5)] Personnel policies shall include position [Position] descriptions for all members of the nursing program (including the director/coordinator) [for the dean/director and nursing faculty] outlining the qualifications and [their] responsibilities directly related to the nursing program [shall be included in the nursing faculty handbook].

(3) [(6)] Written policies for nursing faculty shall also include: terms of employment, plans for faculty orientation to the institution and to the nursing program, resources and opportunities for faculty development[,] and evaluation of faculty, and Nursing Peer Review, as described in §217.19 (relating to Incident-Based Nursing Peer Review and Whistleblower Protections) and 217.20 (relating to Safe Harbor Nursing Peer Review and Whistleblower Protections) of this title.

(4) Orientation of new nursing faculty members shall be initiated at the onset of employment.

(5) A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs.

(6) A variety of means shall be used to evaluate faculty performance such as self, student, peer, and administrative evaluation.

[(A) Orientation of new nursing faculty members shall be initiated at the onset of employment].

[(B) A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs].

[(C) A variety of means shall be used to evaluate faculty performance such as self, student, peer, and administrative evaluation.]

(c) [(b)] A professional nursing education program shall employ sufficient faculty members with educational preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:

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

(d) [(e)] Faculty Qualifications and Responsibilities.

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

(e) [(d)] Faculty Waivers.

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

[(6) The dean or director shall submit a sworn (notarized) notification of waiver to the Board.]

(6) [(7)] If an extension of the waiver is needed, the dean or director shall petition Board Staff for an extension of the original waiver.

(f) [(e)] Non-nursing faculty are exempt from meeting the faculty qualifications of this chapter as long as the teaching assignments are not nursing content or clinical nursing courses.

(g) [(f)] All nursing faculty, as well as non-nursing faculty, who teach non-clinical nursing courses that are part of the nursing curriculum, e.g., biological, physical, social, behavioral and nursing sciences, including pathophysiology, pharmacology, research, nutrition, human growth and development, management, and statistics, shall have sufficient graduate level educational preparation verified by the program dean or director as appropriate to these areas of responsibility.

(h) [(g)] Non-nursing faculty assigned to teach didactic nursing content shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(i) [(h)] Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(j) [(i)] Faculty shall be responsible for:

(1) - (4) (No change.)

(k) [(j)] Teaching activities shall be coordinated among full-time faculty, part-time faculty, clinical preceptors, and clinical teaching assistants.

(l) [(k)] There shall be a minimum of one (1) full-time nursing instructor for the program.

(m) [(l)] A dean/director without major teaching or clinical responsibilities shall not be considered a full-time instructor for purposes of meeting the Board's requirements related to having a sufficient number of nursing faculty for a professional nursing education program.

[(m) Substitute faculty may be employed to meet emergent program needs. Substitute faculty shall meet qualifications as specified in subsection (e)(2) of this section.]

[(n) Faculty Organization:]

[(1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.]

[(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing, and evaluating the nursing program. Such participation includes, but is not limited to: the initiation and/or change in program policies; personnel policies; curriculum; utilization of affiliating agencies; and program evaluation.]

[(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.]

[(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.]

[(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives, and evaluative criteria shall be included in policies for part-time faculty.]

§215.8. Students.

(a) (No change.)

(b) A program must seek approval prior to an increase in enrollment of twenty-five percent (25%) or greater by headcount in one (1) academic year for each nursing program offered. The program must notify Board Staff four (4) months prior to the anticipated increase in

enrollment. The Executive Director shall have the authority to approve an increase in enrollment on behalf of the Board. When determining whether to approve a request for an increase in enrollment under this rule, the Executive Director and/or the Board shall consider:

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

(3) the effect of the change of enrollment on faculty workload;

(4) - (6) (No change.)

(c) (No change.)

(d) The program shall have a Nursing Student Handbook with well-defined, written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, ~~and~~ graduation policies, and policies to ensure students fulfill requirements for obtaining criminal history record information as set forth in the Occupations Code §301.257. Processes shall be in place for policy development, implementation, and enforcement. ~~that shall be developed, implemented, and enforced.~~

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

(e) Reasons for dismissal from the program shall be clearly stated in written nursing student policies and shall address include any demonstration of the following, including, but not limited to:

(1) behavior evidencing ~~evidence of~~ actual or potential harm to patients, clients, or the public;

(2) criminal behavior that could affect licensure, as set forth in §213.28 (relating to Licensure of Individuals with Criminal History) of this title ~~whether violent or non-violent, directed against persons, property or public order and decency;~~

(3) current fitness to practice nursing, as set forth in §213.29 (relating to Fitness to Practice) of this title ~~intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for a substance use disorder, mental illness, or diminished mental capacity;~~ and

(4) ~~the lack of~~ good professional character, as set forth in §213.27 (relating to Good Professional Character) of this title ~~as evidenced by a single incident or an integrated pattern of personal, academic and/or occupational behaviors which indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to: behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.~~

(f) - (j) (No change.)

§215.9. *Program of Study.*

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

(1) - (6) (No change.)

(7) designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational [Professional] (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), October 2010 (DECs);* and

(8) (No change.)

(b) (No change.)

(c) Instruction shall include, but not be limited to: organized student/faculty interactive learning activities, formal lecture,

audiovisual presentations, nursing skills laboratory instruction and demonstration, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.

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

(3) Clinical learning experiences shall include actual hours of practice in nursing skills and computer laboratories; simulated clinical experiences; faculty supervised hands-on clinical care; clinical conferences; debriefing; and observation experiences. Observation experiences provide supplemental learning experiences to meet specific learning objectives.

(4) (No change.)

(d) (No change.)

(e) The program of study shall include, but not be limited to, the following areas:

(1) (No change.)

(2) nursing courses which include didactic and clinical learning experiences in the five (5) ~~four (4)~~ content areas, medical-surgical, geriatric, maternal/child health, pediatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and prepare students to safely practice professional nursing through the promotion, prevention, rehabilitation, maintenance, restoration of health, and palliative and end-of-life care for individuals ~~of all ages~~ across the lifespan.

(A) - (C) (No change.)

(3) Nursing courses shall prepare students to recognize and analyze patient, family, and environmental cues and use critical thinking in making nursing clinical judgments. ~~health care needs, select and apply relevant knowledge and appropriate methods for meeting the health care needs of individuals and families, and evaluate the effectiveness of the nursing care.~~

(4) (No change.)

(f) The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence, and integration of learning.

(1) The learning experiences shall provide for progressive development of values, knowledge, judgment, and skills.

(2) Didactic learning experiences shall be provided either prior to or concurrent (at the same time) with the related clinical learning experiences.

(3) Clinical learning experiences shall be sufficient in quantity and quality to provide opportunities for students to achieve the stated outcomes.

(4) Students shall have sufficient opportunities in simulated or clinical settings to develop technical skills, using contemporary technologies, essential for safe, effective nursing practice.

(5) Learning opportunities shall assist students to develop communication and interpersonal skills.

(g) (No change.)

(h) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective, and psychomotor achievements in course/clinical objectives, according to Board Education Guideline 3.7.3.a. Student Evaluation Methods and Tools. Board Education Guideline 3.7.4.a. Using Standardized Examinations outlines the effective use of standardized examinations as an evaluation of student progress.

(i) Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board Education Guideline 3.7.1.a. Proposals for Curriculum Changes. The two (2) types of curriculum changes are:

(1) (No change.)

(2) Major curriculum changes requiring Board staff approval prior to implementation include:

(A) (No change.)

(B) The addition of transition course(s), tracks/alternative programs of study, including MEEP and Dual-Credit High School programs, that provide educational mobility;

(C) - (D) (No change.)

(j) (No change.)

(k) Professional nursing education programs planning [that have full approval status and are undergoing] major curriculum changes shall submit a curriculum change [an abbreviated] proposal, as outlined in Board Education Guideline 3.7.1.a., to the Board office for approval at least four (4) months prior to implementation. [The abbreviated proposal shall contain at least the following:]

{(1) new and old philosophy/mission, major concepts, program objectives/outcomes, course objectives/outcomes;}

{(2) new and old curriculum plans;}

{(3) rationale for the curriculum changes;}

{(4) clinical evaluation tools for each clinical course; and}

{(5) additional information, as requested, in order to provide clarity for Board Staff.}

{(1) Professional nursing education programs not having full approval status, but proposing a major curriculum change, shall submit a full curriculum change proposal, as outlined in Board Education Guideline 3.7.1.a, to the Board office and meet the requirements as outlined in subsection (i) of this section. Professional nursing education programs not having full approval status are not eligible to request Board Staff approval for the addition of transition course(s) or tracks/alternative programs of study, including MEEP, that provide educational mobility or to submit for Board approval a proposal for a new nursing education program until the program's status has been restored to full approval status by the Board.}

(l) [(m)] All professional nursing education programs implementing any curriculum change shall submit to Board Staff an evaluation of the outcomes of the implemented curriculum change through the first graduating class under the new curriculum.

§215.10. Clinical Learning Experiences.

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

(e) Clinical learning experiences shall include the administration of medications, health promotion and preventive aspects, nursing care of persons across [throughout] the life span with acute and chronic illnesses, and rehabilitative care.

(1) Students shall participate in instructor-supervised [instructor supervised] patient teaching.

(2) Students shall also be provided opportunities for participation in clinical conferences/debriefing [confereneees].

(3) When a high-fidelity simulation laboratory is used to meet clinical learning objectives, the faculty shall be trained in planning and guiding the experience and in debriefing and evaluating students. Programs may use up to 50% simulation activities in each clinical

course. [Simulated laboratory experiences may also be utilized as a teaching strategy in classroom and clinical settings to meet objectives and may be counted as either classroom or clinical hours for the purpose of calculating the hours in the curriculum.]

(f) (No change.)

(g) The following ratios only apply to clinical learning experiences involving direct patient care:

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

(3) Clinical learning experiences shall be designed for students to meet clinical objectives in all clinical activities (skills and simulation laboratories and hands-on care).

(4) [(3)] The faculty member shall supervise an assigned [that] group in [only] one (1) facility at a time, unless some portion or all of the clinical group are assigned to observation experiences or to preceptors in additional settings.

(5) [(4)] Direct faculty supervision is not required for an observation experience.

(h) Clinical preceptors may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing [; or after a student has received clinical and didactic instruction in the basic areas of nursing for the related course or specific learning experience].

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

(4) The preceptor shall be responsible for the clinical learning experiences of no more than two (2) students at a time [per clinical group].

(i) Clinical teaching assistants may assist qualified, experienced faculty with clinical learning experiences.

(1) In clinical learning experiences where a faculty member is assisted [supported] by a clinical teaching assistant, the ratio of faculty to students shall not exceed two (2) to fifteen (15).

(2) (No change.)

(j) (No change.)

§215.11. Facilities, Resources, and Services

(a) (No change.)

(b) An appropriately equipped skills laboratory shall be provided to accommodate the maximum number of students allowed for the program and to provide a learning environment where students can receive instruction and demonstrate all basic nursing skills. A simulation laboratory may be provided to enhance clinical learning experiences where students can practice nursing care through planned scenarios that mimic real clinical situations.

(1) The laboratories [laboratory] shall be equipped with hot and cold running water.

(2) The laboratories [laboratory] shall have adequate storage for equipment and supplies.

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

§215.13. Total Program Evaluation.

(a) There shall be a written plan for the systematic evaluation of the effectiveness of the total program. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, and indicators (benchmarks) of program and instructional effectiveness. The following broad areas shall be periodically evaluated:

(1) - (4) (No change.)

(5) affiliating agencies and clinical learning activities, including simulation experiences;

(6) - (10) (No change.)

(b) - (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 May 21, 2018.

TRD-201802226

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: July 1, 2018

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



CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.1

Introduction

The Texas Board of Nursing (Board) proposes amendments to §217.1, relating to *Definitions*. The amendments are being proposed under the authority of the Occupations Code Chapter 601 and are necessary for consistency with those statutory definitions.

Background

During the 84th Legislative Session, Senate Bill (SB) 202 was enacted by the Texas Legislature and amended Chapter 601 of the Texas Occupations Code. Among other things, SB 202 transferred the licensing and regulation of radiologic technologists from the Department of State Health Services (DSHS) to the Texas Medical Board. However, the Board's current rule still refers to rules that were adopted by DSHS under the old statutory scheme, but no longer exist. The proposed amendments are necessary to correct this outdated reference and to include a proper reference to the statutory definition of the term *radiologic procedure*.

At its April 2018 regularly scheduled meeting, the Board considered the proposed amendments and authorized the proposed amendments to be published in the *Texas Register* for public comment.

Section by Section Overview

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that includes appropriate reference to the statutory definition of *radiologic procedure*.

There are no anticipated costs of compliance with the proposal. The proposed amendments reference the statutory definition of a term. The proposed amendments do not impose any foreseeable costs on any entity required to comply with the rule. Because there are no anticipated costs associated with the adoption of this proposal, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

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

Request for Public Comment. Comments on this proposal may be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §601.002(9) and §301.151.

Section 601.002(9) defines the term *radiologic procedure* as a procedure or article, including a diagnostic X-ray or a nuclear medicine procedure, that: (i) is intended for use in the diagnosis of disease or other medical or dental conditions in humans or the cure, mitigation, treatment, or prevention of disease in humans; and (ii) achieves its intended purpose through the emission of radiation.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §601.002(9) and §301.151.

§217.1. *Definitions.*

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

(1) - (32) (No change).

(33) Radiologic procedure--Any procedure or article used with clients, including diagnostic x-rays or nuclear medicine procedures, through the emission of ionizing radiation as stated in the Occupations Code §601.002(9) [25 TAC §143.2].

(34) - (50) (No change).

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

Filed with the Office of the Secretary of State on May 17, 2018.

TRD-201802192

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: July 1, 2018

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



22 TAC §217.14

Introduction

The Texas Board of Nursing (Board) proposes amendments to §217.14, relating to *Registered Nurses Performing Radiologic Procedures*. The amendments are being proposed under the authority of the Occupations Code Chapter 601 and are necessary for consistency with those statutory mandates.

Background

During the 84th Legislative Session, Senate Bill (SB) 202 was enacted by the Texas Legislature and amended Chapter 601 of the Texas Occupations Code. Among other things, SB 202 transferred the licensing and regulation of radiologic technologists from the Department of State Health Services to the Texas Medical Board. SB 202 also created an advisory board responsible for establishing the minimum standards for curriculum and education programs designed to train medical radiologic technologists to perform radiologic procedures.

Pursuant to Chapter 601, any individual who performs a radiologic procedure must hold a certificate issued by the advisory board. However, an individual may be exempted from holding a certificate under the chapter if: (i) the individual is a licensed practitioner (doctor of medicine, osteopathy, podiatry, or dentistry, or a chiropractor) and performs the procedure in the course and scope of the profession for which the individual holds the

license; (ii) the individual performs the procedure under the instruction or direction of a practitioner and complies with rules adopted under §601.252 of the chapter; (iii) the procedure is performed under the supervision of a dentist and the individual is registered with the State Board of Dental Examiners and complies with rules adopted by that board under §601.252; (iv) the procedure is performed in a hospital that participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Hospitals and the individual has completed a training program approved by the advisory board under §601.252; (v) the individual is a student enrolled in a training program that meets the minimum standards adopted under §601.201 and is performing a radiologic procedure in an academic or clinical setting as part of the training program; or (vi) the individual is licensed or otherwise registered as a medical radiologic technologist by another state, the American Registry of Radiologic Technologists, the American Registry of Clinical Radiography Technologists, or a professional organization or association recognized by the advisory board, enrolled in a continuing education program that meets the requirements adopted under §601.108, and is performing a radiologic procedure as part of the continuing education program for not more than 10 days.

Section 601.253 further requires the Board to adopt rules governing registered nurses performing radiologic procedures. These rules must establish mandatory training guidelines and require registered nurses performing radiologic procedures under the instruction or direction of a practitioner to register with the Board and to identify the practitioner ordering the procedures.

The Board's existing rule already requires registered nurses performing radiologic procedures, other than those performing radiologic procedures in a hospital in the federal Medicare program or that is accredited by the Joint Commission, to register with the Board. The Board's existing rule also currently requires registered nurses performing radiologic procedures to comply with the training requirements of Chapter 601 and those of the Texas Medical Board. Further, the Board's current rule requires registered nurses performing radiologic procedures to comply with the Texas Medical Practice Act, the Texas Pharmacy Act, and any other applicable laws of the State of Texas affecting their practice. The proposed amendments do not change these existing requirements. Rather, the proposed amendments re-iterate that the training program completed by the registered nurse must sufficiently and adequately prepare the nurse to provide safe and effective nursing care in that role.

The proposed amendments do include one new requirement. Each registered nurse who completes a training course under the rule must maintain a record demonstrating completion of an appropriate training program that has adequately prepared the nurse to perform radiologic procedures. The records must document the nurse's attendance and completion of the training program, as evidenced by original certificates of attendance and completion, and must be available for submission to the Board upon audit. The records must be maintained by the nurse for a minimum of three consecutive renewal periods or six years. These requirements are necessary to ensure that registered nurses subject to the rule complete the required training and that the Board is able to audit completion of the training to ensure compliance as necessary.

The remaining proposed amendments are not substantive in nature and make editorial and/or grammatical changes to the text of the section.

At its April 2018 regularly scheduled meeting, the Board considered the proposed amendments and authorized their publication in the *Texas Register* for public comment.

Section by Section Overview.

Proposed amended §217.14(a) states that a registered nurse who performs radiologic procedures other than in a hospital that participates in the federal Medicare program or that is accredited by the Joint Commission shall submit an application for registration to the Board and shall submit evidence including, but not limited to: (i) current licensure as a registered nurse in the State of Texas; and (ii) the name and business address of the practitioner or director of radiological services under whose instruction or direction the radiologic procedures are performed.

Proposed amended §217.14(b) provides that, after review by the Board, notification of registration shall be mailed to the registered nurse informing him/her that the registration with the Board has been completed.

Proposed amended §217.14(c) provides that the registered nurse who is registered to perform radiologic procedures pursuant to subsection (a) of the section shall notify the Board within 30 days of any changes that would render the information on the nurse's application incorrect, including, but not limited to any changes in the identity of the practitioner or director of radiological procedures under whose instruction or direction the radiologic procedures are performed.

Proposed amended §217.14(d) states that the registered nurse whose functions include radiologic procedures must act within the scope of the Texas Nursing Practice Act and the Board's rules and complete a training program that adequately prepares the nurse to provide safe and effective nursing care in that role. Further, the nurse shall comply with the requirements and limitations of the Medical Radiologic Technologist Certification Act (Occupations Code Chapter 601) and any applicable rules of the Texas Medical Board. In addition, to the extent applicable, the registered nurse must be in compliance with the Texas Medical Practice Act, the Texas Pharmacy Act, and any other applicable laws of the State of Texas.

Proposed amended §217.14(e) states that each nurse shall be responsible for maintaining a record demonstrating completion of an appropriate training program that has adequately prepared the nurse to perform radiologic procedures. These records shall document attendance and completion of the training program, as evidenced by original certificates of attendance and completion, and must be available for submission to the Board upon audit. These records shall be maintained by the nurse for a minimum of three consecutive renewal periods or six years.

Proposed amended §217.14(f) provides that any nurse who violates the Board's rule, the applicable rules of the Texas Medical Board, or other applicable law shall be subject to disciplinary action.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of a rule that is consistent with the statutory mandates of Chapter 601.

There are no anticipated costs of compliance with the proposal. First, the majority of the proposed amendments to the section are editorial or clarifying in nature and do not change the existing requirements of the rule. Only one proposed provision imposes a new requirement. Proposed amended §217.14(e) requires registered nurses completing the required training to maintain evidence of the completion of the training for a minimum of three consecutive renewal periods or six years. However, this requirement is not expected to result in any costs to the individuals. Because there are no anticipated costs associated with the adoption of this proposal, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis. Additionally, as required by the Government Code §2006.001, the Board has determined that there will not be an adverse economic impact on rural communities.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed new section will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

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

Request for Public Comment. Comments on this proposal may be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code Chapter 601 and §301.151.

Specifically, §601.253 requires the Board to adopt rules governing registered nurses performing radiologic procedures, includ-

ing rules establishing mandatory training guidelines and requiring registered nurses performing radiologic procedures to register with the Board and to identify the practitioner ordering the procedures.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code Chapter 601 and §301.151.

§217.14. Registered Nurses Performing Radiologic Procedures.

(a) A registered nurse who performs radiologic procedures other than in a hospital that participates in the federal Medicare program or that is accredited by the [The] Joint Commission shall submit an application for registration to the Board [board] and shall submit evidence including, but not limited to, the following:

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

(b) After review by the Board [board], notification of registration shall be mailed to the registered nurse informing him/her that the registration with the Board [board] has been completed.

(c) The registered nurse who is registered to perform radiologic procedures pursuant to subsection (a) of this section shall notify the Board [board] within 30 days of any changes that would render the information on the nurse's application incorrect, including, but not limited to any changes in the identity of the practitioner or director of radiological procedures under whose instruction or direction the radiologic procedures are performed.

(d) The registered nurse whose functions include radiologic procedures must act within the scope of the Texas Nursing Practice Act and the Board's rules and complete a training program that adequately prepares the nurse to provide safe and effective nursing care in that role. Further, the nurse [and] shall comply with the [training] requirements and limitations of the Medical Radiologic Technologist Certification Act (Occupations Code Chapter 601) and any applicable [the] rules of the Texas Medical Board. In addition, to the extent applicable, the registered nurse must be in compliance with the Texas Medical Practice Act, the Texas Pharmacy Act, and any other applicable laws of the State of Texas.

(e) Each nurse shall be responsible for maintaining a record demonstrating completion of an appropriate training program that has adequately prepared the nurse to perform radiologic procedures. These records shall document attendance and completion of the training program, as evidenced by original certificates of attendance and completion, and must be available for submission to the Board upon audit. These records shall be maintained by the nurse for a minimum of three consecutive renewal periods or six years.

(f) [(e)] Any nurse who violates these rules, the applicable rules of the Texas Medical Board, or other applicable law shall be subject to disciplinary action [by the board under the Occupations Code Chapter 301 and the Board's rules].

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802194

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: July 1, 2018

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



22 TAC §217.23

Introduction

The Texas Board of Nursing (Board) proposes new §217.23, relating to *Balance Billing*. The new section is being proposed under the authority of the Insurance Code Chapter 1467 and is necessary for compliance with those statutory mandates.

Background

During the 85th Legislative Session, the Texas Legislature enacted Senate Bill (SB) 507, which amended the Insurance Code Chapter 1467, and became effective on September 1, 2107. Chapter 1467 originally applied only to facility-based physicians (those working in ambulatory surgical centers; birthing centers; hospitals, and free standing emergency medical care facilities). SB 507, however, expanded the provisions of the chapter to all health care providers, including nurses in certain circumstances.

SB 507 permits insured individuals (enrollees) to request mandatory mediation with a facility-based or emergency care provider if the individual receives a bill exceeding \$500 (after co-payments, deductibles, and co-insurance) for emergency care or a health care or medical service or supply provided by a facility-based or emergency care provider. If requested, the provider and the insurer/administrator must attend and participate in the mediation. Prior to the mediation, all of the parties must participate in a mandatory informal settlement teleconference. If the matter is not resolved during the teleconference, a mediation must take place in the county where the health care services were rendered. The mediation will focus on whether the amount charged by the provider was excessive and whether the amount covered by the insurer/administrator was usual and customary or whether the amount paid was low. The mediator's fee is required to be split evenly among the provider and the insurer/administrator. Unsuccessful mediations must be referred to a special judge for a hearing in district court.

Except in the case of an emergency, and if requested by an enrollee, a health care provider must also provide to the enrollee an estimate of the costs the enrollee will be responsible for paying. This estimate must be provided before any health care services are rendered. If the provider obtains the individual's written acknowledgment of the estimated costs, the provider cannot be required to participate in mediation, so long as the billed amount is lower than or equal to the amount quoted in the estimate. Further, Chapter 1467 requires providers to include in their billing statements notice of the opportunity for mandatory mediation. Once a provider has been informed of a mediation request, the provider may not seek collection activities against the insured individual while the claim is pending resolution. Chapter 1467 also requires the imposition of an administrative penalty on providers who are found to have participated in mediation in bad faith.

The proposed new section is necessary to implement the requirements of Chapter 1467 and to provide notice to licensees of their responsibilities under the chapter.

Section by Section Overview.

Proposed new §217.23(a) identifies the purpose of the new section, which is to implement the requirements of Chapter 1467 and to notify licensees of their responsibilities under that chapter.

Proposed new §217.23(b) clarifies that the new section only applies to a facility-based or emergency care provider, as those terms are defined in §1467.001, who bills an enrollee for out-of-network emergency care or health care or medical service or supply provided on or after January 1, 2018.

Proposed new §217.23(c) sets forth the specific responsibilities of a licensee subject to the section's requirements. Proposed new §217.23(c)(1) prescribes the licensee's responsibilities related to a mediation under Chapter 1467.

First, an enrollee, as that term is defined in §1467.001(3), may request mediation of a settlement of an out-of-network health benefit claim if: (i) the amount for which the enrollee is responsible to a facility-based or emergency care provider, after co-payments, deductibles, and co-insurance, including the amount unpaid by the administrator or insurer, is greater than \$500; and (ii) the health benefit claim is for emergency care or a health care or medical service or supply provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator.

Second, if an enrollee requests mediation under Chapter 1467, the facility-based or emergency care provider must participate in good faith in the mediation.

Third, prior to participation in a mediation, all parties, including the facility-based or emergency care provider, must participate in an informal settlement teleconference not later than the 30th day after the date on which the enrollee submits the request for mediation. If the informal settlement teleconference is unsuccessful in resolving the matter, a mediation must be conducted in the county in which the health care or medical services were rendered.

Fourth, in a mediation under Chapter 1467, the parties must evaluate: (i) whether the amount charged by the facility-based or emergency care provider for the health care or medical service or supply is excessive; (ii) whether the amount paid by the insurer or administrator represents the usual and customary rate for the health care or medical service or supply or is unreasonably low; and (iii) the amount, after co-payments, deductibles, and co-insurance are applied, for which the enrollee is responsible to the facility-based or emergency care provider.

Fifth, the costs of a mediation under Chapter 1467 are required to be borne equally between the facility-based or emergency care provider and the insurer or administrator.

Sixth, in the event a mediation is unsuccessful, the matter must be referred to a special judge for resolution, as set forth in §1467.057.

Finally, a facility-based provider will not be required to participate in mediation to mediate a billed charge if, prior to providing a health care service or supply, the facility-based provider makes a written disclosure, as described further in paragraph (2) of subsection (c), and obtains the enrollee's written acknowledgment of that disclosure, so long as the billed amount is less than or equal to the maximum amount projected in the disclosure.

Proposed new §217.23(c)(2) sets forth a licensee's responsibilities with regard to billing notices.

First, except in the case of an emergency, and if requested by an enrollee, a facility-based provider must provide a complete disclosure to the enrollee, prior to providing the health care or medical service or supply, that: (i) explains that the facility-based provider does not have a contract with the enrollee's health benefit plan; (ii) discloses projected amounts for which the enrollee may be responsible; and (iii) discloses the circumstances under which the enrollee would be responsible for those amounts.

Second, a facility-based or emergency care provider must include a conspicuous, plain-language explanation of the mediation process available under Chapter 1467, as set forth in §1467.0511, in a bill sent to each enrollee by the facility-based or emergency care provider.

Proposed new §217.23(c)(3) sets forth a licensee's responsibilities with regard to collection notices.

On receipt of notice from the Texas Department of Insurance that an enrollee has made a request for mediation, the facility-based or emergency care provider may not pursue any collection efforts against the enrollee for amounts other than co-payments, deductibles, and co-insurance, before the earlier of: (i) the date the mediation is completed; or (ii) the date the request to mediate is withdrawn.

Proposed new §217.23(d) addresses complaint investigation and resolution. First, except for good cause shown, and in compliance with §1467.102, on a report of a mediator and appropriate proof of bad faith mediation, the Board is required to impose an administrative penalty. As set forth in §1467.101, the following conduct constitutes bad faith mediation: (i) failing to participate in the mediation, if participation in the mediation was required; (ii) failing to provide information the mediator believes is necessary to facilitate an agreement; or (iii) failing to designate a representative participating in the mediation with full authority to enter into any mediated agreement. Failure to reach an agreement is not conclusive proof of bad faith mediation.

Second, a complaint may be filed with the Board by a mediator or by an enrollee who is not satisfied with a mediated agreement for improper billing practices. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After investigation, if the Board determines that a licensee has engaged in improper billing practices or has committed a violation of the Nursing Practice Act, Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed new section will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed new section in effect, the anticipated public benefit will be the adoption of a rule that complies with the statutory mandates of Chapter 1467.

There are some anticipated costs of compliance associated with the proposal. However, these costs are a direct result of the implementation of the requirements of Chapter 1467. The anticipated costs result from the requirements in proposed new §217.23(c). This proposed new subsection incorporates the statutory requirement found in §1467.051(b) that, upon request of an enrollee, a licensee must participate in a mediation. Fur-

ther, the proposed new subsection requires a licensee to evenly split the costs of the mediator with the insurer/administrator. This proposed new requirement is consistent with the statutory mandates of §1467.053.

If a mediation is unsuccessful, the mediation must be referred to a special judge for resolution. This may cause a licensee to incur additional costs. This proposed new requirement is also consistent with the statutory mandates of §1467.057.

The costs associated with these provisions may vary among licensee, depending on the individual mediator chosen for the mediation, the length of the mediation, the location of the mediation, the complexity of the issues involved in the mediation, and the relative positions of the participating parties. Any costs associated with further litigation will be dependent on the local rules associated with the assigned special judge and court.

The proposed new section, as well as Chapter 1467, provides an option to reduce the costs of compliance by eliminating a licensee's obligation to attend mediation under certain circumstances. A licensee will not be required to participate in a mediation regarding a billed charge if, prior to providing a health care service or supply, the licensee provides a disclosure to the enrollee that explains that the provider does not have a contract with the enrollee's health benefit plan, discloses projected amounts for which the enrollee may be responsible, and discloses the circumstances under which the enrollee would be responsible for those amounts. So long as the billed amount is less than or equal to the maximum amount projected in the disclosure, the licensee will not be required to participate in the mandatory mediation.

All other anticipated costs associated with the proposal are the direct result of the implementation of the statutory mandates of Chapter 1467 and are not a result of the administration of the proposed new section. Further, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045(b) because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and is necessary to implement legislation, as provided by §2001.0045(c).

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

Section 2006.002(c-1) requires that the regulatory 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." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2)

defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and §2006.001(2) must be met in order for an entity to qualify as a micro business or small business. The Government Code §2006.001(1-a) defines a rural community as a municipality with a population of less than 25,000.

The Board does not anticipate that any rural communities will be affected by the proposal. The Board anticipates few, if any, individual licensees will qualify as a small or micro business under §2006.001 and, therefore, be affected by the proposal. However, for those that may, the Board has determined that the proposal is necessary to protect the health, safety, and economic welfare of the state.

The purpose of the proposal is to implement the statutory requirements of Chapter 1467. In particular, the provisions of the proposal that may result in a cost of compliance are based upon the statutory mandates that require the same. As previously noted in this proposal, §1467.051(b) requires the participation in mandatory mediation. Further, §1467.053(d) requires that the mediator's fees be split evenly between the licensee and the insurer/administrator. The legislature has already determined that these requirements and associated costs are necessary to ensure that individual enrollees have an opportunity to resolve outstanding billing issues with providers. The proposal does not impose any additional costs other than those already imposed by the legislature. As a result, the Board has determined that there are no additional regulatory alternatives to the proposed new requirements that will sufficiently protect the health, safety, and economic interests of Texas consumers and the welfare of the state.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed new section will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal is not expected to have an effect on existing agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal is not expected to have an effect on existing agency positions; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal creates a new regulation, as the new section is necessary to implement the provisions of Chapter 1467; (vi) the proposal does not expand or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule's applicability; and (viii) the proposal does not have an effect on the state's economy.

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

Request for Public Comment. Comments on this proposal may be submitted to James W. Johnston, General Counsel, Texas

Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. Comments must be received no later than thirty (30) days from the date of publication of this proposal. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The new section is proposed under the authority of the Insurance Code §1467.003 and the Occupations Code §301.151.

Section 1467.003 authorizes the Board to adopt rules as necessary to implement its respective powers and duties under that chapter.

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

Cross Reference To Statute. The following statutes are affected by this proposal: the Insurance Code §1467.003 and the Occupations Code §301.151.

§217.23. Balance Billing.

(a) Purpose. The purpose of this section is to implement the requirements of the Insurance Code Chapter 1467 and notify licensees of their responsibilities under that chapter.

(b) Applicability. This section applies to any facility-based provider or emergency care provider, as those terms are defined in the Insurance Code §1467.001, who bills an enrollee for out-of-network emergency care, health care, or medical service or supply provided on or after January 1, 2018.

(c) Responsibilities of Licensee.

(1) Mediation.

(A) An enrollee, as that term is defined in the Insurance Code §1467.001(3), may request mediation of a settlement of an out-of-network health benefit claim if:

(i) the amount for which the enrollee is responsible to a facility-based or emergency care provider, after co-payments, deductibles, and co-insurance, including the amount unpaid by the administrator or insurer, is greater than \$500; and

(ii) the health benefit claim is for emergency care or a health care or medical service or supply provided by a facility-based provider in a facility that is a preferred provider or that has a contract with the administrator.

(B) If an enrollee requests mediation under the Insurance Code Chapter 1467, the facility-based or emergency care provider must participate in good faith in the mediation.

(C) Prior to participation in a mediation, all parties, including the facility-based or emergency care provider, must participate in an informal settlement teleconference not later than the 30th day after the date on which the enrollee submits the request for mediation. If the informal settlement teleconference is unsuccessful in resolving the matter, a mediation must be conducted in the county in which the health care or medical services were rendered.

(D) In a mediation under the Insurance Code Chapter 1467, the parties must evaluate:

(i) whether the amount charged by the facility-based or emergency care provider for the health care or medical service or supply is excessive;

(ii) whether the amount paid by the insurer or administrator represents the usual and customary rate for the health care or medical service or supply or is unreasonably low; and

(iii) the amount, after co-payments, deductibles, and co-insurance are applied, for which the enrollee is responsible to the facility-based or emergency care provider.

(E) The costs of a mediation under the Insurance Code Chapter 1467 shall be borne equally between the facility-based or emergency care provider and the insurer or administrator.

(F) In the event a mediation is unsuccessful, the matter must be referred to a special judge for resolution, as set forth in the Insurance Code §1467.057.

(G) A facility-based provider will not be required to participate in mediation to mediate a billed charge if, prior to providing a health care service or supply, the facility-based provider makes a disclosure, as set forth in paragraph (2) of this subsection, and obtains the enrollee's written acknowledgment of that disclosure, so long as the billed amount is less than or equal to the maximum amount projected in the disclosure.

(2) Billing Notices.

(A) Except in the case of an emergency, and if requested by an enrollee, a facility-based provider must provide a complete disclosure to the enrollee, prior to providing the health care or medical service or supply, that:

(i) explains that the facility-based provider does not have a contract with the enrollee's health benefit plan;

(ii) discloses projected amounts for which the enrollee may be responsible; and

(iii) discloses the circumstances under which the enrollee would be responsible for those amounts.

(B) A facility-based or emergency care provider must include a conspicuous, plain-language explanation of the mediation process available under the Insurance Code Chapter 1467, as set forth in §1467.0511, in a bill sent to each enrollee by the facility-based or emergency care provider.

(3) Collection Notices. On receipt of notice from the Texas Department of Insurance that an enrollee has made a request for mediation, the facility-based or emergency care provider may not pursue any collection efforts against the enrollee for amounts other than co-payments, deductibles, and co-insurance, before the earlier of the date the mediation is completed or the date the request to mediate is withdrawn.

(d) Complaint Investigation and Resolution.

(1) Bad faith.

(A) Except for good cause shown, on a report of a mediator and appropriate proof of bad faith mediation, the Board shall impose an administrative penalty.

(B) The following conduct constitutes bad faith mediation:

(i) failing to participate in the mediation, if participation in the mediation was required;

(ii) failing to provide information the mediator believes is necessary to facilitate an agreement; or

(iii) failing to designate a representative participating in the mediation with full authority to enter into any mediated agreement.

(C) Failure to reach an agreement is not conclusive proof of bad faith mediation.

(2) Complaint process. A complaint may be filed with the Board by a mediator or by an enrollee who is not satisfied with a mediated agreement for improper billing practices. Complaints that do not involve delayed health care or medical care shall be assigned a Priority 4 status, as described in §213.13 of this title (relating to Complaint Investigation and Disposition). After investigation, if the Board determines that a licensee has engaged in improper billing practices or has committed a violation of the Nursing Practice Act, Chapter 1467, or other applicable law, the Board will impose appropriate disciplinary action.

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

Filed with the Office of the Secretary of State on May 21, 2018.

TRD-201802220

Jena Abel

Deputy General Counsel

Texas Board of Nursing

Earliest possible date of adoption: July 1, 2018

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



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.155

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.155, Advertisements, in Chapter 535, General Provisions.

The proposed amendments to §535.155 clarify that a sign giving directions to property for sale or lease is not considered an advertisement if it only contains the directional arrows or the directional arrows and the listing broker's logo or name only. In addition, the word "realty" was removed from the prohibited terms set out in subsection (d)(5) to allow this word to be used at the beginning or middle of a team name.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for

persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity in the rule.

For each year of the first five years the proposed amendments are in effect the amendments will not:

create or eliminate a government program;

require the creation of new employee positions or the elimination of existing employee positions;

require an increase or decrease in future legislative appropriations to the agency;

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

increase or decrease the number of individuals subject to the rule's applicability;

positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.155. Advertisements.

(a) Each advertisement must include the following in a readily noticeable location in the advertisement:

(1) the name of the license holder or team placing the advertisement; and

(2) the broker's name in at least half the size of the largest contact information for any sales agent, associated broker, or team name contained in the advertisement.

(b) For the purposes of this section:

(1) "Advertisement" is any form of communication by or on behalf of a license holder designed to attract the public to use real estate brokerage services and includes, but is not limited to, all publications, brochures, radio or television broadcasts, all electronic media including email, text messages, social media, the Internet, business stationery, business cards, displays, signs and billboards. Advertisement does not include:

(A) a communication from a license holder to the license holder's current client; and[-]

(B) a directional sign that may also contain only the broker's name or logo.

(2) Associated broker has the meaning assigned by §535.154.

(3) "Broker's name" means:

(A) the broker's name as shown on a license issued by the Commission;

(B) if an individual, an alternate name registered with the Commission; or

(C) any assumed business name that meets the requirements of §535.154.

(4) "Contact Information" means any information that can be used to contact a license holder featured in the advertisement, including a name, phone number, email address, website address, social media handle, scan code or other similar information.

(5) "Party" means a prospective buyer, seller, landlord, or tenant, or an authorized legal representative of a buyer, seller, landlord, or tenant, including a trustee, guardian, executor, administrator, receiver, or attorney-in-fact. The term does not include a license holder who represents a party.

(6) "Team name" has the meaning assigned by §535.154.

(c) For an advertisement on social media or by text, the information required by this section may be located on a separate page or on the account user profile page of the license holder, if the separate page or account user profile is:

(1) readily accessible by a direct link from the social media or text; and

(2) readily noticeable on the separate page or in the account user profile.

(d) For purposes of this section and §1101.652(b)(23) of the Act, an advertisement that misleads or is likely to deceive the public, tends to create a misleading impression, or implies that a sales agent is responsible for the operation of the broker's real estate brokerage business includes, but is not limited to, any advertisement:

(1) that is inaccurate in any material fact or representation;

(2) that does not comply with this section;

(3) that identifies a sales agent as a broker;

(4) that uses a title, such as owner, president, CEO, COO, or other similar title, email or website address that implies a sales agent is responsible for the operations of a brokerage;

(5) that contains a team name with terms that imply that the team is offering brokerage services independent from its sponsoring broker, including, but not limited to, ["~~realty~~,"] "brokerage", "company", and "associates";

(6) that contains the name of a sales agent that is not the name as shown on the sales agent's license issued by the Commission or an alternate name registered with the Commission;

(7) that contains the name of a sales agent whose name is, in whole or in part, used in a broker's name and that implies that the sales agent is responsible for the operation of the brokerage;

(8) that causes a member of the public to believe that a person not licensed to conduct real estate brokerage is engaged in real estate brokerage;

(9) that contains the name or likeness of an unlicensed person that does not clearly disclose that the person does not hold a license;

(10) that creates confusion regarding the permitted use of a property;

(11) about the value of a property, unless it is based on an appraisal that is disclosed and readily available upon request by a party or it is given in compliance with §535.17;

(12) that implies the person making the advertisement was involved in a transaction regarding a property when the person had no such role;

(13) about a property that is subject to an exclusive listing agreement without the permission of the listing broker and without disclosing the name of the listing broker unless the listing broker has expressly agreed in writing to waive disclosure;

(14) offering a listed property that is not discontinued within 10 days after the listing agreement is no longer in effect;

(15) about a property 10 days or more after the closing of a transaction unless the current status of the property is included in the advertisement;

(16) that offers to rebate a portion of a license holder's compensation to a party if the advertisement does not disclose that payment of the rebate is subject to the consent of the party the license holder represents in the transaction;

(17) that offers to rebate a portion of a license holder's commission contingent upon a party's use of a specified service provider, or subject to approval by a third party such as a lender, unless the advertisement also contains a disclosure that payment of the rebate is subject to restrictions;

(18) that offers or promotes the use of a real estate service provider other than the license holder and the license holder expects to receive compensation if a party uses those services, if the advertisement does not contain a disclosure that the license holder may receive compensation from the service provider;

(19) that ranks the license holder or another service provider unless the ranking is based on objective criteria disclosed in the advertisement; or

(20) that states or implies that the license holder teaches or offers Commission approved courses in conjunction with an approved school or other approved organization unless the license holder is approved by the Commission to teach or offer the courses.

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

Filed with the Office of the Secretary of State on May 16, 2018.

TRD-201802167

Kerri Lewis

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: July 1, 2018

For further information, please call: (512) 936-3092



TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.3, §701.27

The Cancer Prevention and Research Institute of Texas (CPRIT or the Institute) proposes amendments to §701.3 and §701.27. The proposed amendments clarify the definition of Request for Applications and remove political contributions of Oversight Committee members as part of the Institute website.

Background and Justification

The proposed amendment to §701.3 clarifies that the defined term, Request for Applications, includes any associated instructions released with the Request for Applications. The proposed amendment to §701.27 makes the administrative rule consistent with a change to CPRIT's statute made during the 2017 Texas Legislature regular session. The Legislature amended Texas Health & Safety Code Chapter 102 to remove the requirements that Oversight Committee members report political contributions over \$1,000 and that CPRIT posts the reported information on its website. Consistent with those changes, the amendment to §701.27 removes the report of Oversight Committee members' political contributions from the list of items the Institute is required to post on its website.

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be the clarification of a defined term and consistency with state law.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the section will be in effect:

- (1) the proposed rule changes will not create or eliminate a government program;
- (2) implementation of the proposed rule changes will not affect the number of employee positions;
- (3) implementation of the proposed rule changes will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule changes will not affect fees paid to the agency;
- (5) the proposed rule changes will not create new rules;
- (6) the proposed rule changes will expand existing rules;

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

(8) The rule changes are unlikely to have a significant impact on the state's economy. Although these changes are likely to have neutral impact on the state's economy, the Institute lacks sufficient data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than July 2, 2018. The Institute asks parties filing comments to indicate whether they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule changes under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendments and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§701.3. Definitions.

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

(1) Advisory Committee--a committee of experts, including practitioners and patient advocates, created by the Oversight Committee to advise the Oversight Committee on issues related to cancer.

(2) Allowable Cost--a cost that is reasonable, necessary for the proper and efficient performance and administration of the project, and allocable to the project.

(3) Annual Public Report--the report issued by the Institute pursuant to Texas Health and Safety Code §102.052 outlining Institute activities, including Grant Awards, research accomplishments, future Program directions, compliance, and Conflicts of Interest actions.

(4) Authorized Expense--cost items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses.

(5) Approved Budget--the financial expenditure plan for the Grant Award, including revisions approved by the Institute and permissible revisions made by the Grant Recipient. The Approved Budget may be shown by Project Year and detailed budget categories.

(6) Authorized Signing Official (ASO)--the individual, including designated alternates, named by the Grant Applicant, who is authorized to act for the Grant Applicant or Grant Recipient in submitting the Grant Application and executing the Grant Contract and associated documents or requests.

(7) Bylaws--the rules established by the Oversight Committee to provide a framework for its operation, management, and governance.

(8) Cancer Prevention--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.

(9) Cancer Prevention and Control Program--effective strategies and interventions for preventing and controlling cancer designed to reduce the incidence and mortality of cancer and to enhance the quality of life of those affected by cancer.

(10) Cancer Prevention and Research Fund--the dedicated account in the general revenue fund consisting of legislative appropriations, gifts, grants, other donations, and earned interest.

(11) Cancer Research--research into the prevention, causes, detection, treatments, and cures for all types of cancer in humans, including basic mechanistic studies, pre-clinical studies, animal model studies, translational research, and clinical research to develop preventative measures, therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer and its effects in humans.

(12) Chief Compliance Officer--the individual employed by the Institute to monitor and report to the Oversight Committee regarding compliance with the Institute's statute and administrative rules. The term may also apply to an individual designated by the Chief Compliance Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(13) Chief Executive Officer--the individual hired by the Oversight Committee to perform duties required by the Institute's Statute or designated by the Oversight Committee. The term may apply to an individual designated by the Chief Executive Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(14) Chief Prevention Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Prevention program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may also apply to an individual designated by the Chief Prevention Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(15) Chief Product Development Officer--the individual hired by Chief Executive Officer to oversee the Institute's Product Development program for drugs, biologicals, diagnostics, or devices arising from Cancer Research, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Product Development Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(16) Chief Scientific Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Research program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Scientific Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(17) Code of Conduct and Ethics--the code adopted by the Oversight Committee pursuant to Texas Health and Safety Code §102.109 to provide guidance related to the ethical conduct expected of Oversight Committee Members, Program Integration Committee Members, and Institute Employees.

(18) Compliance Program--a process to assess and ensure compliance by the Oversight Committee Members and Institute Employees with applicable laws, rules, and policies, including matters of ethics and standards of conduct, financial reporting, internal accounting controls, and auditing.

(19) Conflict(s) of Interest--a financial, professional, or personal interest held by the individual or the individual's Relative that is contrary to the individual's obligation and duty to act for the benefit of the Institute.

(20) Encumbered Funds--funds that are designated by a Grant Recipient for a specific purpose.

(21) Financial Status Report--form used to report all Grant Award related financial expenditures incurred in implementation of the Grant Award. This form may also be referred to as "FSR" or "Form 269-A."

(22) Grant Applicant--the public or private institution of higher education, as defined by §61.003, Texas Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits a Grant Application to the Institute. Unless otherwise indicated, this term includes the Principal Investigator or Program Director.

(23) Grant Application--the written proposal submitted by a Grant Applicant to the Institute in the form required by the Institute that, if successful, will result in a Grant Award.

(24) Grant Award--funding, including a direct company investment, awarded by the Institute pursuant to a Grant Contract providing money to the Grant Recipient to carry out the Cancer Research or Cancer Prevention project in accordance with rules, regulations, and guidance provided by the Institute.

(25) Grant Contract--the legal agreement executed by the Grant Recipient and the Institute setting forth the terms and conditions for the Cancer Research or Cancer Prevention Grant Award approved by the Oversight Committee.

(26) Grant Management System--the electronic interactive system used by the Institute to exchange, record, and store Grant Application and Grant Award information.

(27) Grant Mechanism--the specific Grant Award type.

(28) Grant Program--the functional area in which the Institute makes Grant Awards, including research, prevention and product development.

(29) Grant Progress Report--the required report submitted by the Grant Recipient at least annually and at the close of the grant award describing the activities undertaken to achieve the goals and objectives of the funded project and including information, data and program metrics. Unless the context clearly indicates otherwise, the Grant Progress Report also includes other required reports such as a Historically Underutilized Business and Texas Supplier form, a single audit determination form, an inventory report, a single audit determination form, a revenue sharing form, and any other reports or forms designated by the Institute.

(30) Grant Recipient--the entire legal entity responsible for the performance or administration of the Grant Award pursuant to the Grant Contract. Unless otherwise indicated, this term includes the Principal Investigator, Program Director, or Company Representative.

(31) Grant Review Cycle--the period that begins on the day that the Request for Applications is released for a particular Grant Mechanism and ends on the day that the Oversight Committee takes action on the Grant Award recommendations.

(32) Grant Review Process--the Institute's processes for Peer Review, Program Review and Oversight Committee approval of Grant Applications.

(33) Indirect Costs--the expenses of doing business that are not readily identified with a particular Grant Award, Grant Contract, project, function, or activity, but are necessary for the general operation of the Grant Recipient or the performance of the Grant Recipient's activities.

(34) Institute--the Cancer Prevention and Research Institute of Texas or CPRIT.

(35) Institute Employee--any individual employed by the Institute, including any individual performing duties for the Institute pursuant to a contract of employment. Unless otherwise indicated, the term does not include an individual providing services to the Institute pursuant to a services contract.

(36) Intellectual Property Rights--any and all of the following and all rights in, arising out of, or associated therewith, but only to the extent resulting from the Grant Award:

(A) The United States and foreign patents and utility models and applications therefore and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents or patent applications, and equivalent or similar rights anywhere in the world in Inventions and discoveries;

(B) All trade secrets and rights in know-how and proprietary information;

(C) All copyrights, whether registered or unregistered, and applications therefore, and all other rights corresponding thereto throughout the world excluding scholarly and academic works such as professional articles and presentations, lab notebooks, and original medical records; and

(D) All mask works, mask work registrations and applications therefore, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topography.

(37) Invention--any method, device, process or discovery that is conceived and/or reduced to practice, whether patentable or not, by the Grant Recipient in the performance of work funded by the Grant Award.

(38) License Agreement--an understanding by which an owner of Technology and associated Intellectual Property Rights grants any right to make, use, develop, sell, offer to sell, import, or otherwise exploit the Technology or Intellectual Property Rights in exchange for consideration.

(39) Matching Funds--the Grant Recipient's Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. For public and private institutions of higher education, this includes the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code.

(40) Numerical Ranking Score--the score given to a Grant Application by the Review Council that is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also signifies the Review Council's view related to how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(41) Overall Evaluation Score--the score given to a Grant Application during the Peer Review Panel review that signifies the reviewers' overall impression of the Grant Application. Typically it is

the average of the scores assigned by two or more Peer Review Panel members.

(42) Oversight Committee--the Institute's governing body, composed of the nine individuals appointed by the Governor, Lieutenant Governor, and the Speaker of the House of Representatives.

(43) Oversight Committee Member--any person appointed to and serving on the Oversight Committee.

(44) Patient Advocate--a trained individual who meets the qualifications set by the Institute and is appointed to a Scientific Research and Prevention Programs Committee to specifically represent the interests of cancer patients as part of the Peer Review of Grant Applications assigned to the individual's committee.

(45) Peer Review--the review process performed by Scientific Research and Prevention Programs Committee members and used by the Institute to provide guidance and recommendations to the Program Integration Committee and the Oversight Committee in making decisions for Grant Awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of scientific and technical merit, as well as other relevant aspects of the Grant Application. When used herein, the term applies individually or collectively, as the context may indicate, to the following review process(es): Preliminary Evaluation, Individual Evaluation by Primary Reviewers, Peer Review Panel discussion and Review Council prioritization.

(46) Peer Review Panel--a group of Scientific Research and Prevention Programs Committee members conducting Peer Review of assigned Grant Applications.

(47) Prevention Review Council--the group of Scientific Research and Prevention Programs Committee members designated as the chairpersons of the Peer Review Panels that review Cancer Prevention program Grant Applications. This group includes the Review Council chairperson.

(48) Primary Reviewer--a Scientific Research and Prevention Programs Committee member responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the general impression of the Grant Application's merit.

(49) Principal Investigator, Program Director, or Company Representative--the single individual designated by the Grant Applicant or Grant Recipient to have the appropriate level of authority and responsibility to direct the project to be supported by the Grant Award.

(50) Product Development Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Grant Applications for the development of drugs, drugs, biologicals, diagnostics, or devices arising from earlier-stage Cancer Research. This group includes the Review Council chairperson.

(51) Product Development Prospects--the potential for development of products, services, or infrastructure to support Cancer Research efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.

(52) Program Income--income from fees for services performed, from the use or rental of real or personal property acquired with Grant Award funds, and from the sale of commodities or items fabricated under the Grant Contract. Except as otherwise provided, Program Income does not include rebates, credits, discounts, refunds, etc. or the interest earned on any of these items. Interest otherwise

earned in excess of \$250 on Grant Award funds is considered Program Income.

(53) Program Integration Committee--the group composed of the Chief Executive Officer, the Chief Scientific Officer, the Chief Product Development Officer, the Commissioner of State Health Services, and the Chief Prevention Officer that is responsible for submitting to the Oversight Committee the list of Grant Applications the Program Integration Committee recommends for Grant Awards.

(54) Project Results--all outcomes of a Grant Award, including publications, knowledge gained, additional funding generated, and any and all Technology and associated Intellectual Property Rights.

(55) Project Year--the intervals of time (usually 12 months each) into which a Grant Award is divided for budgetary, funding, and reporting purposes. The effective date of the Grant Contract is the first day of the first Project Year.

(56) Real Property--land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(57) Relative--a person related within the second degree by consanguinity or affinity determined in accordance with §§573.021 - 573.025, Texas Government Code. For purposes of this definition:

(A) examples of an individual within the second degree by consanguinity are a child, grandchild, parent, grandparent, brother, sister;

(B) a husband and wife are related to each other in the first degree of affinity. For other relationship by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity;

(C) an individual adopted into a family is considered a Relative on the same basis as a natural born family member; and

(D) an individual is considered a spouse even if the marriage has been dissolved by death or divorce if there are surviving children of that marriage.

(58) Request for Applications--the invitation released by the Institute seeking the submission of Grant Applications for a particular Grant Mechanism. It provides information relevant to the Grant Award to be funded, including funding amount, Grant Review Process information, evaluation criteria, and required Grant Application components. The Request for Applications includes any associated written instructions provided by the Institute and available to all Grant Applicants.

(59) Review Council--the term used to generally refer to one or more of the Prevention Review Council, the Product Development Review Council, or Scientific Review Council.

(60) Scientific Research and Prevention Programs Committee--a group of experts in the field of Cancer Research, Cancer Prevention or Product Development, including trained Patient Advocates, appointed by the Chief Executive Officer and approved by the Oversight Committee for the purpose of conducting Peer Review of Grants Applications and recommending Grant Awards. A Peer Review Panel is a Scientific Research and Prevention Programs Committee, as is a Review Council.

(61) Scientific Research and Prevention Programs Committee Member--an individual appointed by the Chief Executive Officer and approved by the Oversight Committee to serve on a Scientific Research and Prevention Programs Committee. Peer Review Panel Members are Scientific Research and Prevention Programs Committee Members, as are Review Council Members.

(62) Scientific Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Cancer Research Grant Applications. This group includes the Review Council chairperson.

(63) Scope of Work--the goals and objectives of the Cancer Research or Cancer Prevention project, including the timeline and milestones to be achieved.

(64) Senior Member or Key Personnel--the Principal Investigator, Project Director or Company Representative and other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not the individuals receive salary or compensation under the Grant Award.

(65) Technology--any and all of the following resulting or arising from work funded by the Grant Award:

(A) Inventions;

(B) Third-Party Information, including but not limited to data, trade secrets and know-how;

(C) databases, compilations and collections of data;

(D) tools, methods and processes; and

(E) works of authorship, excluding all scholarly works, but including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, files, records, data and mask works; and all instantiations of the foregoing in any form and embodied in any form, including but not limited to therapeutics, drugs, drug delivery systems, drug formulations, devices, diagnostics, biomarkers, reagents and research tools.

(66) Texas Cancer Plan--a coordinated, prioritized, and actionable framework that helps to guide statewide efforts to fight the human and economic burden of cancer in Texas.

(67) Third-Party Information--generally, all trade secrets, proprietary information, know-how and non-public business information disclosed to the Institute by Grant Applicant, Grant Recipient, or other individual external to the Institute.

(68) Tobacco--all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco.

§701.27. Publicly Available Institute Reports and Records.

To promote transparency in its activities, the Institute maintains the information described in this section and makes such information publicly available through the Institute's Internet website or upon request.

(1) The Texas Cancer Plan;

(2) The Institute's Annual Public Report;

(3) The Conflict of Interest information described in this paragraph for the previous 12 months:

(A) A list of disclosed Conflicts of Interest requiring recusal.

(B) Any unreported Conflicts of Interest confirmed by an Institute investigation and actions taken by the Institute regarding same.

(C) Any Conflict of Interest waivers granted.

~~(4) An annual report of political contributions exceeding \$1,000 made to candidates for state or federal office by Oversight Com-~~

mittee Members for the five years preceding the Member's appointment and each year after the Member's appointment until the Member's term expires;]

(4) [(5)] The annual Grant Program priorities set by the Oversight Committee;

(5) [(6)] Oversight Committee Bylaws;

(6) [(7)] Code of Conduct and Ethics;

(7) [(8)] A list, separated by Grant Program and Peer Review Panel, of the Scientific Research and Prevention Programs Committee Members provisionally appointed or approved by the Oversight Committee;

(8) [(9)] The Institute's honoraria policy for Scientific Research and Prevention Programs Committee Members;

(9) [(10)] The supporting documentation regarding the Institute's implementation of its Conflict of Interest policy and actions taken to exclude a conflicted Oversight Committee Member, Program Integration Committee Member, Scientific Research and Prevention Programs Committee Member or Institute Employee from participating in the review, discussion, deliberation and vote on the Grant Application;

(10) [(11)] The Chief Executive Officer's annual report to the Oversight Committee on the progress and continued merit of each research Program funded by the Institute;

(11) [(12)] Grant Applicant information:

(A) Name and address;

(B) Amount of funding applied for;

(C) Type of cancer addressed by the Grant Application;

and

(D) A high-level summary of work proposed to be funded by the Grant Award;

(12) [(13)] Information related to Grant Awards, including the name of the Grant Recipient, the amount of the Grant Award approved by the Oversight Committee, the type of cancer addressed, and a high-level summary of the work funded by the Grant Award;

(13) [(14)] Records of a nonprofit organization established to provide support to the Institute;

(14) [(15)] Except as excluded by 702.7(f) of this Title, information related to any gift, grant, or other consideration provided to the Institute, Institute Employee, or a member of an Institute committee. Such information shall state:

(A) Donor's name;

(B) Amount of donation; and

(C) Date of donation;

(15) [(16)] A list of the Institute's Advisory Committees and the reports presented to the Oversight Committee by each Advisory Committee;

(16) [(17)] The Institute's approved internal audit annual report and the internal audit plan posted no later than thirty (30) days after approval by the Oversight Committee, or the Chief Executive Officer if the Oversight Committee is unable to meet;

(17) [(18)] A detailed summary of the weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit plan or annual report and a summary of the action taken by the Institute to the

address concerns, if any, that are raised by the audit plan or annual report;

(18) [(19)] Information regarding staff compensation in compliance with §659.026, Texas Government Code.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802198

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: July 1, 2018

For further information, please call: (512) 305-8487



CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.11

The Cancer Prevention and Research Institute of Texas (Institute or CPRIT) proposes an amendment to §703.11(b)(4). The proposed amendment changes the timeframe when a grant recipient may use a new federal indirect cost rate from "less than six months" to "six months or less."

Background and Justification

The proposed amendment to §703.11(b)(4) revises the starting date when a grant recipient may use a new federal indirect cost rate (FICR) to calculate the matching funds requirement. A grant recipient that is a public or private institution, as defined by §61.003, Texas Education Code, may use their FICR as a credit when calculating the grant recipient's matching funds requirement. Currently, if the FICR changes less than six months following the anniversary date of the effective date of the grant contract, the grant recipient may use the new rate. The proposed amendment changes the time to "six months or less" for a grant recipient to use a new FICR. This change clarifies the timeframe calculation and gives grant recipients more time to use an updated FICR.

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to enforcing the rule will be the clarification of the time that a grant recipient may use a new FICR when calculating required matching funds.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the section will be in effect:

- (1) the proposed rule changes will not create or eliminate a government program;
- (2) implementation of the proposed rule changes will not affect the number of employee positions;
- (3) implementation of the proposed rule changes will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule changes will not affect fees paid to the agency;
- (5) the proposed rule changes will not create new rules;
- (6) the proposed rule changes will expand existing rules;
- (7) the proposed rule changes will not change the number of individuals subject to the rules; and
- (8) The rule changes are unlikely to have a significant impact on the state's economy. Although these changes are likely to have neutral impact on the state's economy, the Institute lacks sufficient data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than July 2, 2018. The Institute asks parties filing comments to indicate whether they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cpvit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule changes under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment, and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§703.11. Requirement to Demonstrate Available Funds for Cancer Research Grants.

(a) Prior to the disbursement of Grant Award funds, the Grant Recipient of a Cancer Research Grant Award shall demonstrate that the Grant Recipient has an amount of Encumbered Funds equal to at least one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award.

(1) The Grant Recipient's written certification of Matching Funds, as described in this section, shall be included in the Grant Contract.

(2) A Grant Recipient of a multiyear Grant Award may certify Matching Funds on a year-by-year basis for the amount of Award Funds to be distributed for the Project Year based upon the Approved Budget.

(3) A Grant Recipient receiving multiple Grant Awards may provide certification at the institutional level.

(4) Nothing herein restricts the Institute from requiring the Grant Recipient to demonstrate an amount of Encumbered Funds greater than one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. To the extent that a greater Matching Funds amount will be required, the Institute shall include the requirement in the Request for Applications and in the Grant Contract.

(b) For purposes of the certification required by subsection (a) of this section, a Grant Recipient that is a public or private institution of higher education, as defined by §61.003, Texas Education Code, may credit toward the Grant Recipient's Matching Funds obligation the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.203(c), Texas Health and Safety Code, subject to the following requirements:

(1) The Grant Recipient shall file certification with the Institute documenting the federal indirect cost rate authorized for research grants awarded to the Grant Recipient;

(2) To the extent that the Grant Recipient's Matching Funds credit does not equal or exceed one-half of the Grant Award funds to be distributed for the Project Year, then the Grant Recipient's Matching Funds certification shall demonstrate that a combination of the dollar amount equivalent credit and the funds to be dedicated to the Grant Award project as described in subsection (c) of this section is available and sufficient to meet or exceed the Matching Fund requirement;

(3) Calculation of the portion of federal indirect cost rate credit associated with subcontracted work performed for the Grant Recipient shall be in accordance with the Grant Recipient's established internal policy; and

(4) If the Grant Recipient's federal indirect cost rate changes [less than] six months or less following the anniversary of the Effective Date of the Grant Contract, then the Grant Recipient may use the new federal indirect cost rate for the purpose of calculating the Grant Recipient's Matching Funds credit for the entirety of the Project Year.

(c) For purposes of the certification required by subsection (a) of this section, Encumbered Funds must be spent directly on the Grant Project or spent on closely related work that supports, extends, or facilitates the Grant Project and may include:

(1) Federal funds, including, but not limited to, American Recovery and Reinvestment Act of 2009 funds, and the fair market value of drug development support provided to the recipient by the National Cancer Institute or other similar programs;

(2) State of Texas funds;

(3) funds of other states;

(4) Non-governmental funds, including private funds, foundation grants, gifts and donations;

(5) Unrecovered Indirect Costs not to exceed ten percent (10%) of the Grant Award amount, subject to the following conditions:

(A) These costs are not otherwise charged against the Grant Award as the five percent (5%) indirect funds amount allowed under §703.12(c) of this chapter (relating to Limitation on Use of Funds);

(B) The Grant Recipient must have a documented federal indirect cost rate or an indirect cost rate certified by an independent accounting firm; and

(C) The Grant Recipient is not a public or private institution of higher education as defined by §61.003 of the Texas Education Code.

(6) Funds contributed by a subcontractor or subawardee and spent on the Grant Project, so long as the subcontractor's or subawardee's portion of otherwise allowable Matching Funds for a Project Year may not exceed the percentage of the total Grant Funds paid to the subcontractor or subawardee for the same Project Year.

(d) For purposes of the certification required by subsection (a) of this section, the following items do not qualify as Encumbered Funds:

- (1) In-kind costs;
- (2) Volunteer services furnished to the Grant Recipient;
- (3) Noncash contributions;
- (4) Income earned by the Grant Recipient that is not available at the time of Grant Award;
- (5) Pre-existing real estate of the Grant Recipient including building, facilities and land;
- (6) Deferred giving such as a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or
- (7) Other items as may be determined by the Oversight Committee.

(e) To the extent that a Grant Recipient of a multiyear Grant Award elects to certify Matching Funds on a Project Year basis, the failure to provide certification of Encumbered Funds at the appropriate time for each Project Year may serve as grounds for suspending reimbursement or advancement of Grant Funds for project costs or terminating the Grant Contract.

(f) In no event shall Grant Award funds for a Project Year be advanced or reimbursed, as may be appropriate for the Grant Award and specified in the Grant Contract, until the certification required by subsection (a) of this section is filed and approved by the Institute.

(g) No later than 30 days following the due date of the FSR reflecting expenses incurred during the last quarter of the Grant Recipient's Project Year, the Grant Recipient shall file a form with the Institute reporting the amount of Matching Funds spent for the preceding Project Year.

(h) If the Grant Recipient failed to expend Matching Funds equal to one-half of the actual amount of Grant Award funds distributed to the Grant Recipient for the same Project Year the Institute shall:

(1) Carry forward and add to the Matching Fund requirement for the next Project Year the dollar amount equal to the deficiency between the actual amount of Grant Award funds distributed and the actual Matching Funds expended, so long as the deficiency is equal to or less than twenty percent (20%) of the total Matching Funds required for the same period and the Grant Recipient has not previously had a Matching Funds deficiency for the project;

(2) Suspend distributing Grant Award funds for the project to the Grant Recipient if the deficiency between the actual amount of Grant Funds distributed and the Matching Funds expended is greater than twenty percent (20%) but less than fifty percent (50%) of the total Matching Funds required for the period.

(A) The Grant Recipient will have no less than eight months from the anniversary of the Grant Contract's effective date to demonstrate that it has expended Encumbered Funds sufficient to fulfill the Matching Funds deficiency for the project.

(B) If the Grant Recipient fails to fulfill the Matching Funds deficiency within the specified period, then the Grant Contract shall be considered in default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract;

(3) Declare the Grant Contract in default if the deficiency between the actual amount of Grant Award funds distributed and the Matching Funds expended is greater than fifty percent (50%) of the total Matching Funds required for the period. The Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract; or

(4) Take appropriate action, including withholding reimbursement, requiring repayment of the deficiency, or terminating the Grant Contract if a deficiency exists between the actual amount of Grant Award funds distributed and the Matching Funds expended and it is the last year of the Grant Contract;

(i) Nothing herein shall preclude the Institute from taking action other than described in subsection (h) of this section based upon the specific reasons for the deficiency. To the extent that other action not described herein is taken by the Institute, such action shall be documented in writing and included in Grant Contract records. The options described in subsection (h)(1) and (2) of this section may be used by the Grant Recipient only one time for the particular project. A second deficiency of any amount shall be considered an event of default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract.

(j) The Grant Recipient shall maintain adequate documentation supporting the source and use of the Matching Funds reported in the certification required by subsection (a) of this section. The Institute shall conduct an annual review of the documentation supporting the source and use of Matching Funds reported in the required certification for a risk-identified sample of Grant Recipients. Based upon the results of the sample, the Institute may elect to expand the review of supporting documentation to other Grant Recipients. Nothing herein restricts the authority of the Institute to review supporting documentation for one or more Grant Recipients or to conduct a review of Matching Funds documentation more frequently 703.12. Limitation on Use of 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 May 18, 2018.

TRD-201802199

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Earliest possible date of adoption: July 1, 2018

For further information, please call: (512) 305-8487



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER B. PAYMENT PROCESSING-- ELECTRONIC FUNDS TRANSFERS

34 TAC §§5.12, 5.14, 5.15

The Comptroller of Public Accounts proposes amendments to §5.12, concerning processing payments through electronic funds transfers; §5.14, concerning participation in the electronic funds transfer system; and §5.15, concerning electronic funds transfers - paycards. The amendments allow state issued paycards to be used to make retirement payments to annuitants.

The amendments to §5.12 add a new definition of "may not" in subsection (b)(14) and renumber subsequent paragraphs; add the words "or annuitant" in renumbered paragraph (19) and "or retirement" in renumbered paragraphs (19) and (25) to allow state issued paycards to be used to make retirement payments to annuitants; clarify in renumbered paragraph (25) that a reversal of certain electronic funds transfer payments initiated by the comptroller may only be initiated in compliance with National Automated Clearing House Association (NACHA) rules; and delete the word "the" in subsection (f) to ensure that the term "NACHA rules" is used in a consistent manner throughout the subchapter.

The amendments to §5.14 delete the words "comptroller" and "comptroller's" in subsection (a)(2) when they are used to modify "EFTS forms" to clarify that not all EFTS forms are created by the comptroller; update subsection (a)(2) to reflect the comptroller's requirement that a state payee obtain EFTS forms from the payee's paying state agency, instead of accessing the forms on the comptroller's website; delete the word "the" in subsections (a)(5) and (g)(4) to ensure that the term "NACHA rules" is used in a consistent manner throughout the subchapter; delete the word "state" in subsection (c)(2) as unnecessary because the term "warrant" is defined as a state payment in renumbered §5.12(b)(29) of this title; update subsection (e)(3) and (4) to clarify that a paying agency is prohibited from initiating a reversal or a reclamation entry for an EFTS payment initiated by the comptroller on behalf of the paying state agency; add the words "or retirement" in subsection (e)(5) to allow state issued paycards to be used to make retirement payments to annuitants; update subsection (e)(5) to differentiate between reversals and reclamations of certain electronic funds transfer payments; and clarify in subsection (e)(5) that the comptroller may initiate a reversal or a reclamation of certain electronic funds transfer payments only in compliance with NACHA rules.

The amendments to §5.15 add the words "or annuitant" in subsections (a)(2) and (c)(1) and "or retirement" in subsections (a), (a)(1), (2), and (c)(1) to allow state issued paycards to be used to make retirement payments to annuitants; and add new subsection (c)(3) to restrict the use of a paycard account used by an annuitant only for deposits of retirement payments.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposal is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends an existing rules.

Mr. Currah also has determined that the proposal would have no significant fiscal impact on small businesses or rural communities. The rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by providing an additional method for making state annuity payments to retirees. There would be no anticipated significant economic cost to the public.

Comments on the proposals may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §403.016(j), which requires the comptroller to adopt rules regarding an electronic funds transfer system.

The amendments implement Government Code, §403.016 regarding electronic funds transfer.

§15.12. *Processing Payments Through Electronic Funds Transfers.*

(a) **Applicability.** These rules govern EFT payments by the comptroller on behalf of custodial and paying state agencies as part of the electronic funds transfer system authorized by Government Code, §403.016.

(b) **Definitions.** The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Automated clearing house (ACH)--**A central distribution and settlement point for the electronic clearing of debits and credits between financial institutions subject to regulation under rules of an automated clearing house association and applicable regulatory law.

(2) **ACH rules--**The operating rules and guidelines governing the ACH network published by NACHA, the Electronic Payments Association and applicable federal regulatory law.

(3) **Comptroller--**The Comptroller of Public Accounts for the State of Texas.

(4) **Comptroller approved EFTS form--**An EFTS form approved by the comptroller for use by a custodial or paying state agency in the EFTS.

(5) **Credit entry--**A type of EFT entry that the comptroller initiates on behalf of a paying state agency to credit a state payee's EFTS account at a domestic financial institution.

(6) **Custodial state agency--**A state agency that establishes and maintains the state payee's account information. The custodial state agency may or may not be the paying state agency.

(7) **Direct deposit--**A form of EFT payment using ACH for the electronic transfer of funds directly into a state payee EFTS account at a domestic financial institution.

(8) **Electronic funds transfer (EFT)--**A transfer of funds which is initiated by the comptroller as originator to the originating depository financial institution to order, instruct, or authorize a receiving depository financial institution to perform a credit entry, reversal, or reclamation in accordance with this subchapter. For purposes of these rules, an EFT does not include a transaction originated by wire transfer, check, draft, warrant, or other paper instrument.

(9) **EFTS authorization--**A state payee's agreement to allow the comptroller to originate state-issued payments by EFT on behalf of a paying state agency to a state payee EFTS account. A state

payee may provide EFTS authorization and notice under Government Code, §403.016 by:

(A) submitting an EFTS authorization with a state payee's agreement on a comptroller approved form, or

(B) providing an agreement to a custodial state agency or a paying state agency in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules.

(10) EFTS form--An electronic or paper form submitted by a state payee as part of the EFTS. An EFTS form used by a custodial state agency or paying state agency is subject to comptroller approval.

(11) Electronic funds transfer system (EFTS)--A system authorized by Government Code, §403.016, that is administered by the comptroller in accordance with these rules to make EFT payments to state payees on behalf of a paying state agency.

(12) Financial institution--A state or national bank, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union that complies with NACHA rules and may be an originating depository financial institution or a receiving depository financial institution.

(13) International ACH transaction (IAT)--An ACH entry involving a financial agency (as defined by NACHA rules) that is not located in the territorial jurisdiction of the United States. An international ACH transaction may be referred to as an IAT entry or IAT.

(14) May not--A prohibition. The term does not mean "might not" or its equivalents.

(15) [(44)] NACHA--The National Automated Clearing House Association is the electronic payments association that establishes standards, rules and procedures that enable domestic financial institutions to exchange payments electronically.

(16) [(45)] Notification of change (NOC)--Information sent by a financial institution through the ACH network to notify the comptroller that previously valid information for a state payee has become outdated or that information contained in a prenotification is erroneous.

(17) [(46)] Originating depository financial institution--A financial institution that originates ACH entries on behalf of the comptroller and transmits ACH entries through the ACH network in accordance with NACHA rules.

(18) [(47)] Originator--The comptroller acts as the originator and authorizes an originating depository financial institution to transmit, on behalf of the state, a credit entry, reclamation, reversal, or prenotification entry to a state payee EFTS account at a domestic financial institution.

(19) [(48)] Paycard--A payment card issued to a state employee or annuitant that provides access to payroll or retirement funds deposited to a designated account at a domestic financial institution as part of the EFTS through the comptroller's paycard contract.

(20) [(49)] Paying state agency--A state agency for which the comptroller initiates payment. The term includes the comptroller of public accounts. A paying state agency may or may not be the custodial state agency.

(21) [(20)] Prenotification--A non-dollar entry sent by the comptroller through the ACH network to alert a receiving depository financial institution that a live dollar credit entry will be forthcoming and to request verification of the state payee's EFTS account information.

(22) [(21)] Receiving depository financial institution--A financial institution that receives ACH entries to a state payee EFTS account.

(23) [(22)] Reclamation--A request made by the comptroller in compliance with NACHA rules, to an originating depository financial institution to reclaim from a receiving depository financial institution any amounts received by a state payee after the state payee's death or legal incapacity, or the death of a beneficiary of a state payee.

(24) [(23)] Regulation E--The regulations adopted by the Board of Governors of the Federal Reserve System at 12 C.F.R. Part 205, as they may be amended, to implement the Electronic Fund Transfer Act (15 U.S.C. §1693 *et seq.*).

(25) [(24)] Reversal--An EFT entry initiated by the comptroller at the request of a paying state agency to correct an erroneous credit entry previously transmitted to a state payee EFTS account. The comptroller may initiate a reversal of an EFT payment of state employee payroll or retirement in compliance with NACHA rules [certain limited circumstances, including a state employee's termination, retirement, or death].

(26) [(25)] State agency--

(A) a department, commission, board, office, or other agency in the executive or legislative branch of state government that is created by the constitution or a statute of this state, including the comptroller of public accounts;

(B) the supreme court of Texas, the court of criminal appeals, a court of appeals, or a state judicial agency; or

(C) a university system and an institution of higher education as defined by Education Code, §61.003 other than a public junior college.

(27) [(26)] State payee--A person to whom a state payment is issued, including an individual, state employee, annuitant, business, vendor, governmental entity, or other legal recipient paid by the State of Texas.

(28) [(27)] State payee EFTS account--An account at a domestic financial institution designated by a state payee for EFTS payments.

(29) [(28)] Warrant--A state payment in the form of a paper instrument which is subject to applicable state law, is drawn on the State of Texas treasury funds, and is payable to a state payee on behalf of a paying state agency by the comptroller or by a state agency with delegated authority to issue warrants under Government Code, §403.060. A warrant is not an approved means of electronic funds transfer as set out in subsection (c) of this section.

(30) [(29)] Wire transfer--An unconditional order to a financial institution to pay a fixed or determinable amount of money to a state payee upon receipt or on a day stated in the order that is transmitted by electronic or other means. Wire transfer is not an approved means of electronic fund transfer, as set out in subsection (c) of this section.

(c) Approved types of EFTS payments.

(1) The comptroller will approve the types of EFTS payments the state may use by rule and amend the approval based upon the comptroller's procedures and current technology.

(2) EFTS payment types approved by the comptroller to a state payee EFTS account include:

(A) direct deposit, except an IAT; and

(B) paycard.

(3) Any other type of payment which is not an approved type of EFTS payment under paragraph (2) of this subsection is not considered to be an approved type of EFTS payment under these rules. Warrants, wire transfers, and IAT are not approved types of EFTS payments.

(d) Compliance with applicable NACHA rules and regulation. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable law and NACHA regulations in EFTS transactions.

(e) Confidentiality. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable confidentiality requirements under the law, including maintaining the confidentiality of financial institution account numbers and state payee social security numbers.

(f) Audit. The comptroller is subject to audit by NACHA for compliance with [the] NACHA rules concerning EFT transactions under this chapter. The comptroller may audit a paying or custodial state agency for compliance with applicable regulatory or NACHA rules concerning EFT transactions under this chapter. A paying or custodial state agency shall comply with an audit under this chapter.

(g) Notification.

(1) Any questions, comments, or complaints concerning the comptroller's electronic funds transfer system as it relates to Government Code, §403.016 and these rules may be sent to the comptroller by mail to: Texas Comptroller of Public Accounts, Fiscal Management, 111 E. 17th Street, Room 911, Austin, Texas, 78711, or by email to tins.mail@cpa.texas.gov, or at such other email address as the comptroller may designate.

(2) The comptroller may provide additional information and updates on its website regarding notification.

(3) The comptroller may require the custodial state agency, the paying state agency, the state payee, and the financial institution to provide contact information as appropriate.

(h) Conflict of law. If there is a conflict in law between any of these rules and applicable law, the applicable law shall apply. If any provision of these rules are held to be invalid, illegal, or unenforceable due to a conflict of law, it will not affect any other provisions of these rules, and the rules will be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

§5.14. Participation in the Electronic Funds Transfer System.

(a) State payee participation in electronic funds transfer system.

(1) Payee disclosure of state payee EFTS account information. The state payee must establish, change, or cancel state payee EFTS account information by providing EFTS authorization to a custodial state agency.

(2) [Comptroller] EFTS forms. The state payee must obtain [may access the comptroller's] EFTS forms from the payee's paying state agency [on the comptroller's web site. The state payee may also access the custodial state agency's EFTS forms on the custodial state agency's web site].

(3) State payee may elect to authorize payment by EFT. A state payee may choose to receive payment by EFT by providing EFTS authorization. A state payee's choice not to provide EFTS authorization constitutes notice to the comptroller to receive payment by warrant as provided in Government Code, §403.016(h)(1).

(4) Payment destination confirmation. At the time of electing to participate in the EFTS, a state payee must confirm whether payments they receive will be forwarded to a financial institution outside of the United States. A state payee must also notify the paying state agency of any change to the intended final destination of a payment or payments outside of the United States.

(5) Refusal to accept an EFT payment. A state payee may refuse to accept an EFTS payment in accordance with [the] NACHA rules.

(6) Refusal of reversal. The state payee may not instruct their financial institution to reject a reversal made by the comptroller to correct an erroneous credit entry.

(7) Cancellation of state payee EFTS authorization. The cancellation of a state payee's EFTS authorization terminates the state payee's participation in the EFTS until the state payee provides a new EFTS authorization.

(8) Comptroller may issue warrant. The comptroller may issue a payment to a state payee by warrant in lieu of EFT pursuant to applicable law, including Government Code, §403.016(i).

(b) Number of EFTS accounts. The comptroller may limit the number EFTS accounts that a state payee may designate for payment by EFTS, subject to the comptroller's policy and procedure.

(c) EFTS authorization.

(1) The state payee must provide EFTS authorization to establish, change, or cancel instructions for EFT payments by providing account information by:

(A) submitting an EFT authorization with a state payee's agreement on a comptroller approved form, or

(B) providing an agreement to a custodial state agency or a paying state agency in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules.

(2) Upon receipt of an EFTS authorization, the comptroller will issue a [state] warrant to a state payee during the time when prenotification is used to verify the account information is correct.

(3) A state payee may request to bypass prenotification by certifying to the custodial state agency that:

(A) the state payee requests to bypass prenotification;

(B) the state payee has verified the account information with the financial institution; and

(C) the state payee is solely responsible for the consequences of providing erroneous account information that may result in rejection, delay, or loss of an EFTS payment.

(4) The custodial state agency must provide written notification to the comptroller that the state payee has requested to bypass prenotification for EFT payments under paragraph (3) of this subsection.

(5) If the state payee's financial institution rejects the state payee's account information, neither the comptroller, the custodial state agency, or the paying state agency is liable for the consequences of the rejection.

(6) If the comptroller receives an EFTS authorization or other notification to cancel a state payee's account information, the state payee's participation in the EFTS terminates until the custodial state agency or the comptroller receives a new EFTS authorization from the state payee.

(7) To facilitate proper EFT payments in accordance with NACHA rules or other regulations, the comptroller may change or cancel a state payee's account information without prior notice to the state payee.

(8) The comptroller or custodial state agency may cancel a state payee's account information without prior notice to the state payee.

(d) Credit of EFTS payments.

(1) A payment is credited to a state payee EFTS account on the effective date of the credit entry regardless of when the receiving depository financial institution posts the credit.

(2) If payment is rejected or posted late by the receiving depository financial institution, the comptroller, a paying state agency, or a custodial state agency are not liable for any additional late payment interest, including under Government Code, Chapter 2251, or late fees or charges, including those that may be imposed by the state payee or receiving depository financial institution.

(e) EFTS initiation of reversals and reclamations.

(1) Only a paying state agency may request that the comptroller initiate a reversal or reclamation.

(2) A paying state agency must request a reversal or reclamation through the comptroller in the comptroller's prescribed manner.

(3) A paying state agency shall not initiate a reversal for an EFTS payment initiated by the comptroller on behalf of the paying state agency.

(4) A paying state agency shall not initiate a reclamation entry for an EFTS payment initiated by the comptroller on behalf of the paying state agency [except when preauthorized by the comptroller].

(5) The comptroller may initiate a reversal for a state payroll or retirement payment or a reclamation for a retirement or benefit payment only in compliance with NACHA rules [certain limited circumstances, including termination of employment, retirement, or death].

(6) Failure to make funds available by a state payee or state payee's beneficiary for a reversal or reclamation entry initiated by the comptroller results in a debt under Government Code, §403.055.

(f) Reversal.

(1) Notice to comptroller. A paying state agency must submit to the comptroller a request for a reversal no later than five banking days after the effective date of the erroneous credit entry in accordance with comptroller procedures and NACHA rules.

(2) A receiving depository financial institution:

(A) may only accept a reversal entry from the comptroller for an erroneous credit entry initiated by the comptroller on behalf of a paying state agency; and

(B) in accordance with NACHA rules, shall not act upon instructions from the state payee to reject a reversal entry.

(3) Notice to state payee. A paying state agency must notify a state payee of a reversal entry no later than the effective date of the reversal in accordance with NACHA rules.

(4) Unsuccessful reversal entry.

(A) If the RFDI does not honor the comptroller's reversal entry, the state payee must reimburse the erroneous credit entry amount to the paying state agency.

(B) If the state payee fails to reimburse the paying state agency for the erroneous credit entry amount, the state payee will owe the amount of the erroneous credit entry as a debt to the state under Government Code, §403.055.

(C) A paying state agency shall report to the comptroller any state payee who fails to reimburse the paying state agency for any erroneous credit entry amounts, as required by Government Code, §403.055(f) and (g).

(g) Reclamation.

(1) A paying state agency must submit EFTS reclamation requests to the comptroller for processing within five business days of notification of the death or legal incapacity of the state payee or beneficiary of the state payee.

(2) The comptroller may initiate a reclamation request on behalf of the paying state agency to reclaim any amounts transmitted to the state payee's account after the state payee's death or legal incapacity, or the death of a beneficiary of the state payee.

(3) The comptroller must provide prior approval to allow a paying state agency to initiate a reclamation entry for a credit entry which the comptroller initiated on behalf of a paying state agency.

(4) In accordance with [the] NACHA rules, if the reclamation request is returned by the receiving depository financial institution, the comptroller may submit a written demand for payment of the reclamation request within fifteen days on behalf of the paying state agency.

(5) Unsuccessful reclamation entry.

(A) If the RFDI does not honor the comptroller's reclamation entry, the state payee or the state payee's beneficiary must reimburse the reclamation entry amount to the paying state agency.

(B) If the state payee or the state payee's beneficiary fails to reimburse the paying state agency for the reclamation entry amount, the state payee or the state payee's beneficiary will owe the reclamation entry amount as a debt to the state under Government Code, §403.055.

(C) A paying state agency shall report to the comptroller any state payee or state payee's beneficiary who fails to reimburse the paying state agency for any reclamation entry amounts, as required by Government Code, §403.055(f) and (g).

§5.15. *Electronic Funds Transfers - Paycards.*

(a) State payroll or retirement paycard.

(1) The comptroller may enter into a contract to offer state employee payroll or retirement payments [payment] using a paycard, an approved type of EFTS payment under §5.12(c) of this title (relating to Processing Payments through Electronic Funds Transfers).

(2) A paycard may be issued to a state employee or annuitant that provides access to payroll or retirement funds deposited to a designated account at a domestic financial institution.

(b) Paycards are subject to Regulation E.

(c) Paycard account deposits.

(1) The state paycard account may only be used for state payroll or retirement deposits initiated by the comptroller for a specific state employee or annuitant.

(2) A state employee may not use the paycard account for any deposit other than deposits of payroll payments.

(3) An annuitant may not use the paycard account for any deposit other than deposits of retirement payments.

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

Filed with the Office of the Secretary of State on May 21, 2018.

TRD-201802227

Victoria North

Chief Counsel, Fiscal and Agency Affairs Legal Services Division

Comptroller of Public Accounts

Earliest possible date of adoption: July 1, 2018

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 433. DRIVER/OPERATOR SUBCHAPTER B. MINIMUM STANDARDS FOR DRIVER/OPERATOR-AERIAL APPARATUS

37 TAC §433.201

The Texas Commission on Fire Protection (the commission) proposes an amendment to Chapter 433, Driver/Operator, Subchapter B, Minimum Standards for Driver/Operator-Aerial Apparatus, concerning §433.201, Driver/Operator-Aerial Apparatus Certification.

The purpose of the proposed amendment is to remove obsolete language that allowed fire protection personnel to challenge the commission examination for Driver/Operator-Aerial during the first year the new certification was offered. The provision expired on May 18, 2018.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendment is in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit from the passage is clearer and concise rules for obtaining this certification.

There will be no impact on micro- or small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis is not required.

The agency has determined that during the first five years the new rule is in effect:

- (1) the rule will not create or eliminate a government program;
- (2) the rule will not require the creation or elimination of employee positions;
- (3) the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule does not require an increase in fees paid to the agency because it is a voluntary credential thus not required.

(5) the rule will not create a new regulation;

(6) the rule will not expand or repeal an existing regulation;

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

(8) The rule is not anticipated to have an adverse impact on the state's economy.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to deborah.cowan@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties and §419.032, which allows the commission to appoint fire protection personnel.

The proposed amendment implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§433.201. *Driver/Operator-Aerial Apparatus Certification.*

[(a)] A Driver/Operator-Aerial Apparatus is defined as an individual who operates an aerial apparatus safely and in accordance with all state and local laws; safely and correctly maneuvers, positions, stabilizes, and operates an aerial apparatus and device; and effectively deploys and operates an elevated master stream from a water source. Other responsibilities include routine apparatus testing, maintenance, inspections, and servicing functions.

[(b)] Individuals holding Driver/Operator-Pumper certification are eligible to take the commission examination for Driver Operator-Aerial Apparatus upon documentation to the commission that the individual has completed Driver Operator Aerial Apparatus training that meets the minimum requirements of the NFPA 1002 or provide documentation of proficiency in the operation of an aerial apparatus from a department with an in service aerial apparatus. This section will expire on May 18, 2018.]

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

Filed with the Office of the Secretary of State on May 21, 2018.

TRD-201802221

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: July 1, 2018

For further information, please call: (512) 936-3812



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1303

The Texas Health and Human Services Commission withdraws the proposed amended §353.1303, which appeared in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2680).

Filed with the Office of the Secretary of State on May 21, 2018.

TRD-201802229

Karen Ray

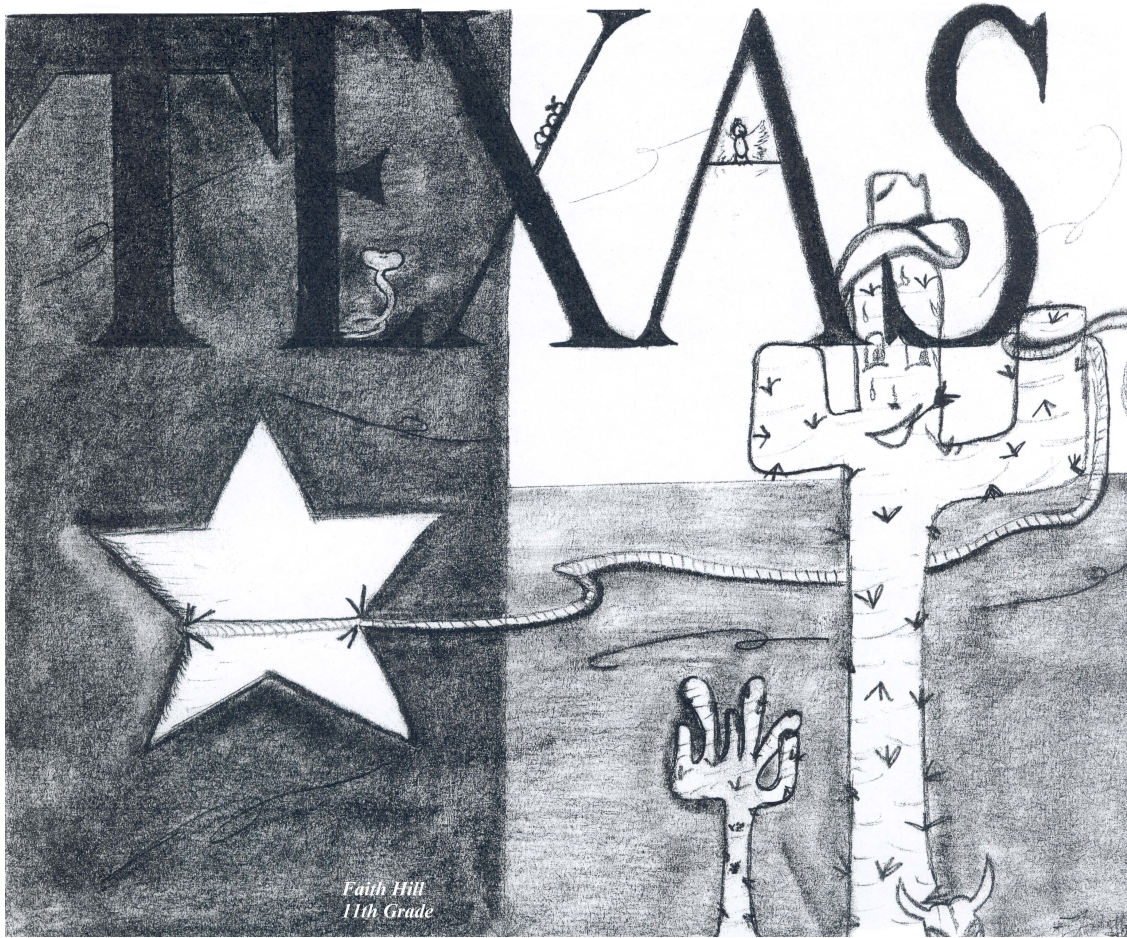
Chief Counsel

Texas Health and Human Services Commission

Effective date: May 21, 2018

For further information, please call: (512) 707-6066





Faith Hill
11th Grade

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.9

The Texas State Board of Pharmacy adopts amendments to §291.9, concerning Prescription Pick Up Locations. These amendments are adopted with changes to the proposed text as published in the March 23, 2018, issue of the *Texas Register* (43 TexReg 1794). The Board made changes to clarify that a prescription order for a controlled substance may be delivered to the office of the prescriber if the prescription is for a single dose that is for administration to the patient in the prescriber's office.

The amendments clarify the requirements for prescription pickup locations to be consistent with DEA requirements.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.9. Prescription Pick Up Locations.

(a) Except as provided in §291.155 of this title (relating to Limited Prescription Delivery Pharmacy (Class H)), no person, firm, or business establishment may have, participate in, or permit an arrangement, branch, connection or affiliation whereby prescriptions are solicited, collected, picked up, or advertised to be picked up, from or at any location other than a pharmacy which is licensed and in good standing with the board.

(b) A pharmacist or pharmacy by means of its employee or by use of a common carrier or the U.S. Mail, at the request of the patient, may:

(1) pick up prescription orders at the:

(A) office or home of the prescriber;

(B) residence or place of employment of the person for whom the prescription was issued; or

(C) hospital or medical care facility in which the patient is receiving treatment; and

(2) deliver prescription drugs to the:

(A) office of the prescriber if the prescription is:

(i) for a dangerous drug; or

(ii) for a single dose of a controlled substance that is for administration to the patient in the prescriber's office;

(B) residence of the person for whom the prescription was issued;

(C) place of employment of the person for whom the prescription was issued, if the person is present to accept delivery; or

(D) hospital or medical care facility in which the patient is receiving treatment.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802200

Allison Vordenbaumen Benz, R.Ph.

Executive Director

Texas State Board of Pharmacy

Effective date: June 7, 2018

Proposal publication date: March 23, 2018

For further information, please call: (512) 305-8028



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33

The Texas State Board of Pharmacy adopts amendments to §291.33, concerning Operational Standards. These amendments are adopted without changes to the proposed text as published in the March 23, 2018, issue of the *Texas Register* (43 TexReg 1795).

The amendments update the requirements for the use of automated checking devices and automated storage and distribution devices by Class A pharmacies.

CVSHealth and Texas Society of Health-System Pharmacists submitted comments in support of the amendments.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control

and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802201

Allison Vordenbaumen Benz, R.Ph.

Executive Director

Texas State Board of Pharmacy

Effective date: June 7, 2018

Proposal publication date: March 23, 2018

For further information, please call: (512) 305-8028



SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.75

The Texas State Board of Pharmacy adopts amendments to §291.75, concerning Records. These amendments are adopted with changes to the proposed text as published in the March 23, 2018, issue of the *Texas Register* (43 TexReg 1799). The Board made changes to clarify the retention period for a log of pharmacy personnel initials or identification codes.

The amendments update the requirements for maintaining a log of pharmacy personnel initials or identification codes.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.75. *Records.*

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of §291.71 of this title (relating to Purpose), §291.72 of this title (relating to Definitions), §291.73 of this title (relating to Personnel), §291.74 of this title (relating to Operational Standards), and this section contained in Institutional Pharmacy (Class C) shall be:

(A) kept by the institutional pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic

format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedule I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, redlined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system, e.g., microfilm or microfiche, provided:

(A) the records in the alternative data retention system contain all of the information required on the manual record; and

(B) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Outpatient records.

(1) Outpatient records shall be maintained as provided in §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A).

(2) Outpatient prescriptions, including, but not limited to, furlough and discharge prescriptions, that are written by the practitioner must be written on a form which meets the requirements of the Act, §562.006. Medication order forms or copies thereof do not meet the requirements for outpatient forms.

(3) Controlled substances listed in Schedule II must be written on an official prescription form in accordance with the Texas Controlled Substances Act, §481.075, and rules promulgated pursuant to the Texas Controlled Substances Act, unless exempted by the Texas controlled substances regulations, 37 TAC §13.74 (relating to Exceptions to Use of Forms). Outpatient prescriptions for Schedule II controlled substances that are exempted from the official prescription requirement must be manually signed by the practitioner.

(c) Patient records.

(1) Original medication orders.

(A) Each original medication order shall bear the following information:

(i) patient name and room number or identification number;

(ii) drug name, strength, and dosage form;

(iii) directions for use;

(iv) date; and

(v) signature or electronic signature of the practitioner or that of his or her authorized agent.

(B) Original medication order shall be maintained with the medication administration records of the patients.

(2) Patient medication records (PMR). A patient medication record shall be maintained for each patient of the facility. The PMR shall contain at a minimum the following information.

(A) Patient information:

- (i) patient name and room number or identification number;
- (ii) gender, and date of birth or age;
- (iii) weight and height;
- (iv) known drug sensitivities and allergies to drugs and/or food;
- (v) primary diagnoses and chronic conditions;
- (vi) primary physician; and
- (vii) other drugs the patient is receiving.

(B) Medication order information:

- (i) date of distribution;
- (ii) drug name, strength, and dosage form; and
- (iii) directions for use.

(3) Controlled substances records. Controlled substances records shall be maintained as follows.

(A) All records for controlled substances shall be maintained in a readily retrievable manner.

(B) Controlled substances records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(4) Schedule II controlled substances records. Records of controlled substances listed in Schedule II shall be maintained as follows.

(A) Records of controlled substances listed in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records.

(B) An institutional pharmacy shall maintain a perpetual inventory of any controlled substance listed in Schedule II.

(C) Distribution records for controlled substances listed in Schedule II shall bear the following information:

- (i) patient's name;
- (ii) prescribing or attending practitioner;
- (iii) name of drug, dosage form, and strength;
- (iv) time and date of administration to patient and quantity administered;
- (v) name, initials, or electronic signature of the individual administering the controlled substance;
- (vi) returns to the pharmacy; and
- (vii) waste (waste is required to be witnessed and cosigned, electronically or manually, by another individual).

(5) Floor stock records.

(A) Distribution records for Schedule II - V controlled substances floor stock shall include the following information:

- (i) patient's name;
- (ii) prescribing or attending practitioner;

(iii) name of controlled substance, dosage form, and strength;

(iv) time and date of administration to patient;

(v) quantity administered;

(vi) name, initials, or electronic signature of the individual administering drug;

(vii) returns to the pharmacy; and

(viii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(B) The record required by subparagraph (A) of this paragraph shall be maintained separately from patient records.

(C) A pharmacist shall review distribution records with medication orders on a periodic basis to verify proper usage of drugs, not to exceed 30 days between such reviews.

(6) General requirements for records maintained in a data processing system.

(A) Noncompliance with data processing requirements. If a hospital pharmacy's data processing system is not in compliance with the Board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) Requirements for back-up systems. The facility shall maintain a back-up copy of information stored in the data processing system using disk, tape, or other electronic back-up system and update this back-up copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(C) Change or discontinuance of a data processing system.

(i) Records of distribution and return for all controlled substances and nalbuphine (e.g., Nubain). A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains the same information as required on the audit trail printout as specified in paragraph (7)(B) of this subsection. The information on this printout shall be sorted and printed by drug name and list all distributions/returns chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(D) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(7) Data processing system maintenance of records for the distribution and return of all controlled substances and nalbuphine (e.g., Nubain) to the pharmacy.

(A) Each time a controlled substance or nalbuphine (e.g., Nubain) is distributed from or returned to the pharmacy, a record of such distribution or return shall be entered into the data processing system.

(B) The data processing system shall have the capacity to produce a hard copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

- (i) patient's name and room number or patient's facility identification number;
- (ii) prescribing or attending practitioner's name;
- (iii) name, strength, and dosage form of the drug product actually distributed;
- (iv) total quantity distributed from and returned to the pharmacy;
- (v) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(I) prescribing or attending practitioner's address; and

(II) practitioner's DEA registration number, if the medication order is for a controlled substance.

(C) An audit trail printout for each strength and dosage form of these drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the facility unless the pharmacy complies with subparagraph (D) of this paragraph. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(D) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this paragraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, or other authorized local, state, or federal law enforcement or regulatory agencies.

(8) Failure to maintain records. Failure to provide records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(9) Data processing system downtime. In the event that a hospital pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for on-line data entry as soon as the system is available for use again.

(10) Ongoing clinical pharmacy program records. If a pharmacy has an ongoing clinical pharmacy program and allows pharmacy technicians to verify the accuracy of work performed by other pharmacy technicians, the pharmacy must have a record of the pharmacy technicians and the duties performed.

(d) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed or distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

- (A) the actual date of distribution;
- (B) the name, strength, and quantity of controlled substances distributed;
- (C) the name, address, and DEA registration number of the distributing pharmacy; and
- (D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(A) The pharmacy, practitioner or other registrant who is receiving the controlled substances shall issue copy 1 and copy 2 of a DEA order form (DEA 222) to the distributing pharmacy.

- (B) The distributing pharmacy shall:
 - (i) complete the area on the DEA order form (DEA 222) titled TO BE FILLED IN BY SUPPLIER;
 - (ii) maintain copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and
 - (iii) forward copy 2 of the DEA order form (DEA 222) to the divisional office of the Drug Enforcement Administration.

(e) Other records. Other records to be maintained by a pharmacy:

- (1) a log of the initials or identification codes which will identify pharmacy personnel by name (the initials or identification code shall be unique to ensure that each person can be identified, i.e., identical initials or identification codes cannot be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;
- (2) copy 3 of DEA order form (DEA 222) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;
- (3) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);
- (4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;
- (5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard copy of the perpetual inventory on-site;

(7) hard copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

- (8) a hard copy Schedule V nonprescription register book;
- (9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and
- (10) a hard copy of any notification required by the Texas Pharmacy Act or these sections including, but not limited to, the following:

- (A) reports of theft or significant loss of controlled substances to DEA, DPS, and the board;

- (B) notifications of a change in pharmacist-in-charge of a pharmacy; and

- (C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medication, devices, or other materials used in diagnosis or treatment of injury, illness, and disease.

- (f) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

- (1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

- (A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

- (B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

- (C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

- (2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

- (3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

- (4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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

Filed with the Office of the Secretary of State on May 18, 2018.
TRD-201802202

Allison Vordenbaumen Benz, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: June 7, 2018
Proposal publication date: March 23, 2018
For further information, please call: (512) 305-8028



22 TAC §291.76

The Texas State Board of Pharmacy adopts amendments to §291.76, concerning Class C Pharmacies Located in a Free-standing Ambulatory Surgical Center. These amendments are adopted without changes to the proposed text as published in the March 23, 2018, issue of the *Texas Register* (43 TexReg 1803). The Board made changes to clarify the retention period for a log of pharmacy personnel initials or identification codes.

The amendments update the requirements for maintaining a log of pharmacy personnel initials or identification codes.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551- 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802203
Allison Vordenbaumen Benz, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: June 7, 2018
Proposal publication date: March 23, 2018
For further information, please call: (512) 305-8028



SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.121

The Texas State Board of Pharmacy adopts amendments to §291.121, concerning Remote Pharmacy Services. These amendments are adopted without changes to the proposed text as published in the March 23, 2018, issue of the *Texas Register* (43 TexReg 1812).

The amendments clarify the requirements for delivery of drugs at a remote site through a telepharmacy system.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the

agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §562.110 as authorizing the agency to adopt rules for telepharmacies.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802204

Allison Vordenbaumen Benz, R.Ph.

Executive Director

Texas State Board of Pharmacy

Effective date: June 7, 2018

Proposal publication date: March 23, 2018

For further information, please call: (512) 305-8028



22 TAC §291.125

The Texas State Board of Pharmacy adopts amendments to §291.125, concerning Centralized Prescription Dispensing. These amendments are adopted without changes to the proposed text as published in the March 23, 2018, issue of the *Texas Register* (43 TexReg 1816).

The amendments clarify the definition of an outsourcing pharmacy and update the requirements for centralized prescription dispensing.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802205

Allison Vordenbaumen Benz, R.Ph.

Executive Director

Texas State Board of Pharmacy

Effective date: June 7, 2018

Proposal publication date: March 23, 2018

For further information, please call: (512) 305-8028



SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.151

The Texas State Board of Pharmacy adopts amendments to §291.151, concerning Pharmacies Located in a Freestanding Emergency Medical Care Facility. These amendments are adopted without changes to the proposed text as published in the March 23, 2018, issue of the *Texas Register* (43 TexReg 1818).

The amendments clarify the duties of the pharmacist-in-charge to include ensuring a pharmacist visits the pharmacy at least once each calendar week; clarify the requirements regarding the withdrawal of drugs from the freestanding emergency medical care facility; and correct a rule reference.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802206

Allison Vordenbaumen Benz, R.Ph.

Executive Director

Texas State Board of Pharmacy

Effective date: June 7, 2018

Proposal publication date: March 23, 2018

For further information, please call: (512) 305-8028



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy adopts an amendment to §501.90, concerning Discreditable Acts, without changes to the proposed text as published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2246). The rule text will not be republished.

The amendment to §501.90 clarifies that if a state or federal court determines that a licensee has violated state or federal laws, or state and federal regulations, such as laws against sexual harassment or under the Deceptive Trade Practices Act, the Board could consider the violation to be a discreditable act and subject the licensee to disciplinary action by the Board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on May 17, 2018.

TRD-201802187

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: June 6, 2018

Proposal publication date: April 13, 2018

For further information, please call: (512) 305-7842



22 TAC §501.93

The Texas State Board of Public Accountancy adopts an amendment to §501.93, concerning Responses, without changes to the proposed text as published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2248) and will not be republished.

The amendment to §501.93 will make it clear that licensees have a responsibility to provide information they have access to which the Board believes is important to the investigation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on May 17, 2018.

TRD-201802188

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: June 6, 2018

Proposal publication date: April 13, 2018

For further information, please call: (512) 305-7842



CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57, concerning Qualified Accounting Courses, without changes to the proposed text as published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2249) and will not be republished.

The amendment to §511.57 clarifies that the minimum of 30 semester hours of upper level accounting classes needed to qualify to take the CPE Exam, that are repeated, may only be counted once to meet the requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on May 17, 2018.

TRD-201802189

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: June 6, 2018

Proposal publication date: April 13, 2018

For further information, please call: (512) 305-7842



22 TAC §511.59

The Texas State Board of Public Accountancy adopts an amendment to §511.59, concerning Definition of 150 Semester Hours, without changes to the proposed text as published in the April 13, 2018, issue of the *Texas Register* (43 TexReg 2251) and will not be republished.

The amendment to §511.59 clarifies that the minimum of 150 semester hours of classes needed to qualify to take the CPE Exam, that are repeated, may only be counted once to meet the requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on May 17, 2018.

TRD-201802191

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: June 6, 2018
Proposal publication date: April 13, 2018
For further information, please call: (512) 305-7842



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER F. SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV)

25 TAC §97.136

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts an amendment to §97.136, concerning Prophylaxis against Ophthalmia Neonatorum. The amendment is adopted without changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1571), and therefore the rule text will not be republished.

BACKGROUND AND PURPOSE

The purpose of the amendment is to comply with House Bill (H.B.) 2886, 85th Legislature, Regular Session, 2017, which amended Texas Health and Safety Code, §81.091.

Texas Health and Safety Code, §81.091 requires a physician, nurse, midwife, or other person in attendance at childbirth to apply prophylaxis or an antibiotic ointment to the newborn's eyes to prevent ophthalmia neonatorum. This law provides for medical care for newborns to prevent neonatal conjunctivitis and complications such as blindness that may arise in the newborn through birth to a mother with untreated gonorrhea (*Neisseria gonorrhoea*) or chlamydia (*chlamydia trachomatis*) infection. The law provides that it is a criminal offense, a Class B misdemeanor, for a person to fail to perform a duty required under this law.

House Bill 2886 provides an exception for certain health care providers who are unable to apply prophylaxis to a newborn due to the objection of a parent, managing conservator, or guardian of the newborn infant. Under this exception, the health care provider does not commit an offense and is not subject to criminal, civil, or administrative liability or any professional disciplinary action for failure to administer the prophylaxis.

House Bill 2886 also requires that the physician, nurse, midwife, or person in attendance shall ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the infant.

COMMENTS

The comment period ended on April 16, 2018. During this period, DSHS did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §81.091, which requires the Executive Commissioner of HHSC to approve prophylaxes for ophthalmic neonatorum prevention; Texas Health and Safety Code, Chapter 81; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on May 17, 2018.

TRD-201802193

Barbara L. Klein

General Counsel

Department of State Health Services

Effective date: June 6, 2018

Proposal publication date: March 16, 2018

For further information, please call: (512) 776-2286



CHAPTER 230. SPECIFIC ADDITIONAL REQUIREMENTS FOR DRUGS SUBCHAPTER B. LIMITATIONS ON SALES OF PRODUCTS CONTAINING EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §230.11, concerning General Provisions and §230.16, concerning Real-time Electronic Logging System; the repeal of §230.12, concerning Exemptions; §230.13, concerning Certificate of Authority; and §230.14, concerning Minimum Standards for Certificate of Authority; and new §230.19, concerning Inspection. The amendments, repeals, and new rule are adopted without changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1573), and therefore the rule text will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments, new section, and repealed sections is to implement Senate Bill (S.B.) 2065, 85th Legislature, Regular Session, 2017, which amended Texas Health and Safety Code, Chapter 486, regarding the retail sale of drug products containing ephedrine, pseudoephedrine, and norpseudoephedrine. Senate Bill 2065 eliminates the certificate of authority program for non-pharmacy retailers that were selling drug products containing ephedrine, pseudoephedrine, and norpseudoephedrine. The certificate of authority program is no longer needed because there are no known non-pharmacy business retailers of these drugs and these drugs are sold exclusively by pharmacies. Additional amendments were included to provide clarity and readability.

COMMENTS

The 30-day comment period ended April 16, 2018. During this period, DSHS did not receive any comments regarding the proposed rules.

25 TAC §§230.11, 230.16, 230.19

STATUTORY AUTHORITY

The amendments and new section are adopted under Texas Health and Safety Code, §486.003, which provides DSHS with the authority to adopt rules to enforce the Over-the-Counter Sales of Ephedrine, Pseudoephedrine, and Norpseudoephedrine Act. The rules are also authorized by Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802195
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: June 7, 2018
Proposal publication date: March 16, 2018
For further information, please call: (512) 834-6755



25 TAC §§230.12 - 230.14

The repeals are adopted under Texas Health and Safety Code, §486.003, which provides DSHS with the authority to adopt rules to enforce the Over-the-Counter Sales of Ephedrine, Pseudoephedrine, and Norpseudoephedrine Act. The rules are also authorized by Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802196
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: June 7, 2018
Proposal publication date: March 16, 2018
For further information, please call: (512) 834-6755



PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.13, §703.21

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to §703.13 and §703.21 without changes to the proposed text as published in the March 9, 2018, issue of the *Texas Register* (43 TexReg 1380). The proposed amendments change the due date of the single audit determination form, which grant recipients are required to submit to the Institute annually.

Reasoned Justification

The proposed amendment to §703.13(b) changes the due date of the single audit determination form to 60 days after the close of the grant recipient's fiscal year. CPRIT requires every grant recipient to submit the single audit determination form reporting whether the grant recipient has expended \$750,000 or more in state award funds. The amount of grant funds expended determines if the grant recipient must submit an audit. Changing the due date removes confusion regarding when single audit determination forms should be submitted and provides for a more streamlined submission process. The proposed change to §703.21(b)(2)(B) ensures that the due date of the single audit determination form is consistently referenced within Chapter 703.

Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §703.13 and §703.21.

The amendments are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802197
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Effective date: June 7, 2018
Proposal publication date: March 9, 2018
For further information, please call: (512) 305-8487



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

**CHAPTER 9. TITLE INSURANCE
SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE**

WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

The Commissioner of Insurance adopts amendments to 28 TAC §9.1, which adopts by reference amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual)*. The amendments update, correct, and clarify existing rules and forms in the *Basic Manual* to facilitate the operation and regulation of title insurance in Texas.

The Commissioner adopts the amendments to §9.1 with changes to the proposed text published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1228) and changes to the items proposed to be adopted by reference. TDI made changes to the proposed items in response to comments.

TDI changed the rule text to revise the effective date stated in the rule. As proposed, the rule would have been effective August 1, 2018. However, an August effective date would have delayed TDI's ability to proceed with other projects to update the *Basic Manual*. So as adopted, this rule will be effective on June 10, 2018. To give title agents and companies time to implement the amendments, as contemplated with the proposed text, the rules and forms adopted by this order will have a delayed implementation date of August 9, 2018, and agents and companies may continue to use the previous rules and forms until that date.

REASONED JUSTIFICATION. This order, which adopts by reference amended rules and forms in the *Basic Manual*, is necessary to facilitate the operation and regulation of title insurance and to update, correct, and clarify title insurance rules and forms.

The item numbers below identify the adopted amendments. Each item number represents amendments to a specific rule or form in the *Basic Manual*. The item numbers in this order are the same as the numbers used in the proposal. These item numbers are for organizational purposes only and do not represent formal agenda items from a call for rulemaking.

The following items are adopted as originally proposed:

Item 2017-1: Procedural Rule P-58, Report on Directly Issued Policy;

Item 2017-2: Form T-00, Verification of Services Rendered;

Item 2017-3: Form T-G1, Policy Guaranty Fee Remittance Form;

Item 2017-4: Form T-S3, Solvency Account Release Request;

Item 2017-5: Form T-S4-A, Financial Matter Disclosure Report;

Item 2017-6: Form T-S1, Title Agent's Unencumbered Assets Certification;

Item 2017-7: Administrative Rule S.1, Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158;

Item 2017-8: Form T-S5, Title Agent Certification of Agent's Quarterly Tax Reports;

Item 2017-9: Administrative Rule S.5, Filing of Title Agent's Quarterly Withholding Tax Report;

Item 2017-10: Procedural Rule P-19, Pending Disbursements;

Item 2017-11: Procedural Rule P-64, Subordinate Liens and Leases - Pursuant to Rule P-11.b.(8);

Item 2017-12: Form T-44, Texas Residential Limited Coverage Junior Loan Policy Combined Schedule;

Item 2017-13: Form T-45, Texas Residential Limited Coverage Junior Loan Down Date Endorsement;

Item 2017-15: Procedural Rule P-27, Disbursement from Escrow or Trust Fund Accounts;

Item 2017-16: Procedural Rule P-45, Texas Reverse Mortgage Endorsement;

Item 2017-17: Form T-43, Texas Reverse Mortgage Endorsement;

Item 2017-18: Form T-51, Purchaser/Seller Insured Closing Service Letter;

Item 2017-19: Form T-52, Abstract Plant Information; and

Item 2017-20: Administrative Rule S.3, Title Agent Requirements, Procedures, and Forms for Obtaining Release of Assets in Accordance With Insurance Code §2651.012(b) or §2651.0121.

The remaining adopted items are described below:

Item 2017-14: Amends Procedural Rule P-9, Endorsement of Owner or Mortgagee Policies. The following amendments to Rule P-9 are adopted as proposed:

-change the terms "Owner Policy" to "Owner's Policy" and "Mortgagee Policy" to "Loan Policy";

-update references to government agency loan programs to use the current names of the programs;

-update or clarify other references, such as updating endorsement names in a consistent manner and clarifying references to applicable parts of the Form T-3 Endorsement Instructions;

-specify in Procedural Rule P-9.b.(1) and (2) that companies may issue a General Endorsement (Form T-3) on payment of the premium prescribed by Rate Rule R-11.a., and may issue the endorsements described in Procedural Rule P-9.b.(6) on payment of any premium prescribed by Rate Rule R-11.d;

-update the reference to Rate Rule R-11.j (formerly R-11.k) in Procedural Rule P-9.b.(13),

-update the reference to Rate Rule R-11.k (formerly R-11.l) in Procedural Rule P-9.b.(14);

-update the reference to Rate Rule R-11.l (formerly R-11.m) in Procedural Rule P-9.b.(15); and

-in Procedural Rule P-9.b.(15), remove the stipulation that a company may issue a Condominium Endorsement on or after the effective date of Rate Rule R-11.m (now Rule R-11.l) because that rule is already effective.

The proposal also sought to amend Rule P-9 to delete Part b.(12) of the rule and to renumber the remaining Parts b.(13), b.(14), and b.(15) because Part b.(12) refers to an endorsement that was deleted in 2010. TDI will still delete the language in Part b.(12), but will list it as "deleted" and keep the remaining numbering as it currently appears, instead of completely removing Part b.(12) and renumbering. See the Summary of Comments and Agency Response section below for additional discussion of this change.

Item 2017-21: Amends Rate Rule R-11, Loan Policy Endorsements, to conform to the rest of the *Basic Manual* by more clearly referencing form and procedural rule numbers and by making other minor editorial changes.

The proposal also sought to amend Rule R-11 to update references to Procedural Rule P-9.b.(13), b.(14), and b.(15); however, because TDI decided not to renumber Rule P-9 in response to comment, it is not necessary to amend Rule R-11 to update any Rule P-9 references at this time.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received one comment from the Texas Land Title Association (TLTA) in support of the proposal with amendments. No one commented against the proposal.

Items 2017-14 (Procedural Rule P-9) and 2017-21 (Rate Rule R-11)

TLTA asks TDI to reconsider some of the proposed changes and to consider additional changes to Item 2017-14, Procedural Rule P-9, Endorsement of Owner or Mortgagee Policies, and to Item 2017-21, Rate Rule R-11, Loan Policy Endorsements.

Comment: TLTA asks TDI to consider adding titles to each subsection in Rule P-9 and in Rule R-11 so that each referenced endorsement is conspicuously named. This practice has been applied to some subsections, but not others, resulting in inconsistencies. Adding titles will provide more clarity and consistency to industry and consumers.

Agency Response: TDI agrees and has added titles to those subsections in Rule P-9 and Rule R-11 that do not currently have titles.

Comment: Regarding the proposed deletion of Part b.(12) of Rule P-9 and the renumbering of the remaining parts of P-9, TLTA asks that TDI list Part b.(12) as deleted and keep the numbering the same for the remaining Parts b.(13), b.(14), and b.(15). Indicating that Part b.(12) is intentionally deleted and keeping the remaining parts numbered as they currently are will avoid any confusion to industry members and the public.

Agency Response: TDI agrees, and has listed P-9.b.(12) as "deleted" and kept the numbering the same for Parts b.(13), b.(14) and b.(15). The proposed amendments to Rule R-11 to update references to Rule P-9 are no longer necessary.

Comment: TLTA indicates that it is against cross-referencing procedural rules and rate rules in Rule P-9 and Rule R-11. Their reasoning is that if one rule name changes, then both rules are out of date; and until the rules are updated, it would be confusing to industry members and the public.

Agency Response: TDI disagrees with the comment and declines to remove the cross-references from Rule P-9 and R-11. While cross-referencing does require updating references when rules change, it also provides a benefit to industry and consumers. Referencing an applicable rate rule within a procedural rule, and vice versa, allows the reader to understand which rules go together. Title insurance is heavily regulated in Texas, with many procedural and rate rules that specifically go together. Including references to specific rules allows agents and consumers to more easily locate these rules and understand how they operate. At this time, the benefit of providing clarity to readers outweighs the burden of updating cross-references in this rule.

Comment: TLTA asks that TDI consider removing language from Rule P-9 that states that premiums must be paid, and then lists the applicable rate rule for that particular endorsement. TLTA reasons that this language is unnecessary because Rate Rule R-2 already mandates that full premiums be collected before issuing any insuring form, with only a few exceptions that are articulated in the rule.

Agency Response: TDI disagrees with the comment and declines to remove this language from Rule P-9 at this time. While Rate Rule R-2 does provide language requiring the collection of premiums before issuing a title insuring form, Rule P-9 lists the specific rate rules that apply to each endorsement. Rule P-9 discusses several different types of endorsements with various rate rules. References to specific rate rules allow the reader to know which rate rules go with which endorsements. This increases transparency and is a benefit to both industry and the public.

Comment: TLTA proposed a number of non-substantive, stylistic edits to enhance the clarity of language in Parts a.(3), b.(1), b.(2), and b.(4) of Rule P-9, and Part c. of Rule R-11.

Agency Response: TDI agrees that many of the proposed non-substantive, stylistic edits enhance clarity, so TDI has made changes to each of those Parts. The changes are in accordance with TLTA's proposed edits and include a few small differences to further enhance clarity.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §9.1 in accordance with Insurance Code §§2551.003, 2703.208, and 36.001.

Section 2551.003 authorizes the Commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the Commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, which concerns the regulation of title insurance.

Section 2703.208 states that an addition or amendment to the *Basic Manual* may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the *Texas Register*.

Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§9.1. *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* as amended, effective June 10, 2018. The document is available from and on file at the Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104. The document is also available on the TDI website at www.tdi.texas.gov, and by email from ChiefClerk@tdi.texas.gov.

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

Filed with the Office of the Secretary of State on May 21, 2018.

TRD-201802225

Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: June 10, 2018
Proposal publication date: March 2, 2018
For further information, please call: (512) 676-6584

◆ ◆ ◆

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE SUBCHAPTER O. ADVISORY COMMITTEES

31 TAC §51.612

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 22, 2018, adopted new §51.612, concerning the Mule Deer Advisory Committee, without changes to the proposed text as published in the February 16, 2018, issue of the *Texas Register* (43 TexReg 823).

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission (the Commission) to "appoint committees to advise the commission on issues under its jurisdiction." Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Over the years, the department has established a number of advisory committees to provide the department with informed opinion regarding various aspects and dimensions of the department's mission. The department believes that these advisory committees perform a valuable service for the department and the people of Texas.

The mule deer population in Texas is an important resource and faces challenges such as land fragmentation, habitat alteration, and disease threats; therefore, the department has determined that it is prudent to establish a mule deer advisory committee to provide the department with informed assistance in furtherance of the department's management goals with respect to mule deer resources.

The new section creates the mule deer advisory committee, establishes that its membership shall represent the ecological range of mule deer in Texas, landowners, conservation and management organizations, and hunters, and provides for an expiration date of July 1, 2022.

The department received three comments opposing adoption of the proposed new rule. No commenter provided a reason or rationale for opposing adoption. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 36 comments supporting adoption of the proposed rule.

The new section is adopted under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §2110.005 and §2110.008.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802209

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: June 7, 2018

Proposal publication date: February 16, 2018

For further information, please call: (512) 389-4775

◆ ◆ ◆

CHAPTER 57. FISHERIES SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 22, 2018, adopted amendments to §57.981 and §57.992, concerning the Statewide Recreational and Commercial Fishing Proclamations. Section 57.981 is adopted with changes to the proposed text as published in the February 16, 2018, issue of the *Texas Register* (43 TexReg 824). Section 57.992 is adopted without changes and will not be republished.

The change to §57.981 alters subsection (d)(1)(C) to restore largemouth bass harvest regulations for Lake Nasworthy, which were inadvertently indicated for removal in the proposed text. Current subsection (d)(1)(C)(viii) establishes largemouth bass harvest regulations on nine water bodies. The department proposed to alter harvest regulations on eight of the nine water bodies, as described in the proposal preamble. Lake Nasworthy, however, was to remain under the current harvest regulation. The change addresses this issue and redesignates the following clauses as necessary.

The amendment to §57.981, concerning Bag, Possession and Length Limits implements a series of changes to largemouth bass harvest regulations on multiple reservoirs and increases the daily bag limit for king mackerel. Over the last year, the department's Inland Fisheries Division conducted an extensive evaluation of largemouth bass harvest regulations across the state with the goal of reducing regulatory complexity where possible. The primary goal was to reduce the number of water bodies where harvest regulations are exceptions to the statewide standards (14-inch minimum length limit, five-fish daily bag limit) and consolidate additional water bodies under existing exceptions without confounding existing management goals and objectives. On that basis, the amendment implements the statewide harvest regulations for largemouth bass on Lake Granbury (Hood County), Possum Kingdom Reservoir (Palo Pinto County), Lake Ratcliff (Houston County), Lake Bryan (Brazos County), Cooper Lake (Delta County), Old Mount Pleasant City Lake (Titus County), Lake Bridgeport (Jack and Wise counties), Burke-Crenshaw Lake (Harris County), Lake Georgetown (Williamson County), Lake Madisonville (Madison County), San Augustine City Lake (San Augustine County),

and Sweetwater Reservoir (Nolan County). Additionally, the amendment eliminates length limit restrictions on Grapevine Lake (Tarrant County) and, while retaining the five-fish daily bag limit, prohibits the retention of more than two fish of less than 18 inches in length. The amendment also replaces the 14- to 24-inch slot length limit on Fayette County Reservoir (Fayette County), Gibbons Creek Reservoir (Grimes County), and Lake Monticello (Titus County) and replaces it with a 16- to 24-inch slot length limit, and replaces the current 18-inch minimum length limit on Lake Bellwood (Smith County) and the 14- to 18-inch slot length limit on Lake Davy Crockett (Fannin County) with a 16-inch maximum length limit while allowing the temporary possession of bass 24 inches or greater for possible submission to ShareLunker program.

Finally, the amendment clarifies that the bag and possession limits in subsection (d)(1)(B) apply to spotted bass as well as largemouth and Alabama bass and increases the daily bag limit for the recreational take of King mackerel from two to three. In a previous rulemaking, the department recognized the Alabama bass as a species distinct from spotted bass; however, the reference to spotted bass generally was inadvertently omitted in the subparagraph designation. The amendment would rectify that oversight. With respect to King mackerel, federal action (82 FR 17387) in May of 2017 increased the daily bag limit for king mackerel in federal waters from two fish to three fish. The department has determined that making the daily bag limit in state waters identical to the daily bag limit in federal waters will provide additional angling opportunity to the public while preventing confusion and possible issues of compliance and enforcement without resulting in negative impacts to the resource.

The amendment to §57.992 Bag, Possession, and Length Limits, increases the daily bag limit for commercial take of king mackerel, for the same reasons discussed in the amendment to §57.981.

The department received 15 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Granbury. Of the 15 comments, two offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the minimum length limit should be 16 inches because that is the best size for a fillet. The department disagrees with the comment and responds that fisheries management is the science of monitoring fisheries resources and implementing harvest strategies that offer sustainable angling opportunity consistent with protection of populations, rather than regulation of portion size. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current regulations should be retained. The department disagrees with the comment and responds the rule as adopted is intended to reduce regulatory complexity without compromising management goals and objectives. No changes were made as a result of the comment.

The department received 138 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Granbury.

The department received 14 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Possum Kingdom Reservoir. Of the 14 comments, two offered a specific reason

or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the daily bag limit should be increased rather than decreasing the minimum length limit. The department disagrees with the comment and responds that implementing the statewide standard reduces regulatory complexity without jeopardizing the sustainability of the fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current regulations should be retained. The department disagrees with the comment and responds the rule as adopted is intended to reduce regulatory complexity without compromising management goals and objectives. No changes were made as a result of the comment.

The department received 138 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Possum Kingdom Reservoir.

The department received 11 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Ratcliff. Of the 11 comments, two offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the daily bag limit should be increased rather than decreasing the minimum length limit. The department disagrees with the comment and responds that implementing the statewide standard reduces regulatory complexity without jeopardizing the sustainability of the fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current regulations should be retained. The department disagrees with the comment and responds the rule as adopted is intended to reduce regulatory complexity without compromising management goals and objectives. No changes were made as a result of the comment.

The department received 104 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Ratcliff.

The department received nine comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Bryan. Of the nine comments, one offered a specific reason or rationale for opposing adoption. The commenter stated that the daily bag limit should be increased rather than decreasing the minimum length limit. The department disagrees with the comment and responds that implementing the statewide standard reduces regulatory complexity without jeopardizing the sustainability of the fishery. No changes were made as a result of the comment.

The department received 102 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Bryan.

The department received nine comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Cooper Lake. Of the nine comments, one offered a specific reason or rationale for opposing adoption.

The commenter stated that the daily bag limit should be increased rather than decreasing the minimum length limit. The department disagrees with the comment and responds that

implementing the statewide standard reduces regulatory complexity without jeopardizing the sustainability of the fishery. No changes were made as a result of the comment.

The department received 114 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Cooper Lake.

The department received 12 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Old Mount Pleasant City Lake. Of the 12 comments, one offered a specific reason or rationale for opposing adoption. The commenter stated that the daily bag limit should be increased rather than decreasing the minimum length limit. The department disagrees with the comment and responds that implementing the statewide standard reduces regulatory complexity without jeopardizing the sustainability of the fishery. No changes were made as a result of the comment.

The department received 98 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Old Mount Pleasant City Lake.

The department received six comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Bridgeport. None of the commenters provided a specific reason or rationale for opposing adoption.

The department received 142 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Bridgeport.

The department received five comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Burke-Crenshaw Lake. None of the comments offered a specific reason or rationale for opposing adoption.

The department received 97 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Burke-Crenshaw Lake.

The department received six comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Georgetown. None of the comments offered a specific reason or rationale for opposing adoption.

The department received 97 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Georgetown.

The department received five comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Madisonville. None of the comments offered a specific reason or rationale for opposing adoption.

The department received 93 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Madisonville.

The department received seven comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on San Augustine City Lake. None of the comments offered a specific reason or rationale for opposing adoption.

The department received 90 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on San Augustine City Lake.

The department received seven comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Sweetwater Reservoir. None of the comments offered a specific reason or rationale for opposing adoption.

The department received 96 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Sweetwater Reservoir.

The department received 19 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Fayette County Reservoir. Of the 19 comments, six offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that there should be no slot limit and only one fish of greater than 24 inches could be retained per day. The department disagrees with the comment and responds that the change from a 14 to 16 inch lower limit for the slot length limit will provide additional opportunity to harvest bass, and the population in the reservoir can sustainably provide this opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be one regulation, statewide. The department disagrees with the comment and responds that river systems and impoundments vary greatly across the state; thus, a single harvest regulation for the entire state would be problematic, from a biological perspective. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the amendment would encourage more fishing tournaments. The department disagrees with the comments and responds that there is no correlation between specific harvest regulations and the existence or the frequency of fishing tournaments. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule would result in harm to the fishery and more boating traffic. The department disagrees with the comment and responds that the rule is intended to reduce regulatory complexity without jeopardizing management objectives. The department also responds that there is no correlation between harvest regulations and boating traffic. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit should be three fish, not more than one greater than 24 inches in length. The department disagrees with the comment and responds that the change from a 14 to 16 inch lower limit for the slot length limit will provide additional opportunity to harvest bass, and the population in the reservoir can sustainably provide this opportunity. No changes were made as a result of the comment.

The department received 117 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Fayette County Reservoir.

The department received 15 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Gibbons Creek Reservoir. Of the 15 comments, one offered a specific reason or ratio-

nale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the daily bag limit should be three fish, not more than one greater than 24 inches in length. The department disagrees with the comment and responds that the change from a 14 to 16 inch lower limit for the slot length limit will provide additional opportunity to harvest bass, and the population in the reservoir can sustainably provide this opportunity. No changes were made as a result of the comment.

The department received 107 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Gibbons Creek Reservoir.

The department received 20 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Monticello. Of the 20 comments, six offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that there should be no slot limit and only one fish of greater than 24 inches could be retained per day. The department disagrees with the comment and responds that the change from a 14 to 16 inch lower limit for the slot length limit will provide additional opportunity to harvest bass, and the population in the reservoir can sustainably provide this opportunity. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the minimum length limit should be 14 inches and there should be no slot limit. The department disagrees with the comments and responds that the slot limit takes advantage of the growth potential of bass in this location and will protect sufficient bass to insure sustainability of the population. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be one regulation, statewide. The department disagrees with the comment and responds that river systems and impoundments vary greatly across the state; thus, a single harvest regulation for the entire state would be problematic, from a biological perspective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit should be three fish, not more than one greater than 24 inches in length. The department disagrees with the comment and responds that the change from a 14 to 16 inch lower limit for the slot length limit will provide additional opportunity to harvest bass, and the population in the reservoir can sustainably provide this opportunity. No changes were made as a result of the comment.

The department received 118 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Monticello.

The department received 39 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Grapevine Lake. Of the 39 comments, 15 offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the minimum length limit should be 16 inches. The department disagrees with

the comment and responds that limiting harvest to two bass less than 18 inches is more compatible with bass population recruitment and reproductive rates that occur in a reservoir with fluctuating water levels like Grapevine. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the statewide standard should be implemented. The department disagrees with the comments and responds that by allowing only two fish of less than 18 inches to be retained per day, the department intends to optimize reproductive potential of the largemouth bass population in a reservoir with fluctuating water levels like Grapevine. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be one regulation, statewide. The department disagrees with the comment and responds that river systems and impoundments vary greatly across the state; thus, a single harvest regulation for the entire state would be problematic, from a biological perspective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should allow the retention of only two fish of greater than 18 inches in length, which would leave larger fish in the lake. The department disagrees with the comment and responds that the rule protects smaller fish so that they become bigger fish. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should only be implemented for tournaments. The department disagrees with the comment and responds that the department regulates the biological totality of fish populations and makes no distinction between tournament angling and individual anglers. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the current slot limit should be retained. The department disagrees with the comment and responds that department data indicate that the slot limit can be eliminated without harming reproductive potential. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that allowing only two fish of less than 18 inches to be retained effectively imposes a minimum length on the remaining three fish in the daily bag limit. The department disagrees with the comments and responds that the regulation initially imposes no minimum length as anglers can harvest bass of any length, and the length restriction would only apply if anglers choose to harvest more than two fish of less than 18 inches. No changes were made as a result of the comments.

The department received 109 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Grapevine Lake.

The department received 15 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Purtil Creek State Park Lake. Of the 15 comments, six offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that eliminating catch-and-release fishing will ruin it as a trophy lake. The department disagrees with the comment and responds that the maximum length limit will protect trophy fish for catch-and-release angling opportunity. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the statewide standard should be implemented. The department disagrees with the comments and responds that the lake is small enough that unlimited harvest of larger fish would be problematic over time. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be one regulation, statewide. The department disagrees with the comment and responds that river systems and impoundments vary greatly across the state; thus, a single harvest regulation for the entire state would be problematic, from a biological perspective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Share-Lunker program should not be tied to a slot limit. The department disagrees with the comment and responds that the rule does not impose a slot limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is too restrictive. The department disagrees with the comment and responds that the rule strikes a balance between angling opportunity and the sustainable management of the fishery. No changes were made as a result of the comment.

The department received 98 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Purtil Creek State Park Lake.

The department received 16 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Raven. Of the 16 comments, five offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the statewide standard should be implemented. The department disagrees with the comments and responds that the lake is small enough that unlimited harvest of larger fish would be problematic over time. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be one regulation, statewide. The department disagrees with the comment and responds that river systems and impoundments vary greatly across the state; thus, a single harvest regulation for the entire state would be problematic, from a biological perspective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a 14-24 inch slot limit. The department disagrees with the comment and responds that the 14-24 inch slot limit is being eliminated as a regulatory option, and the rule strikes a balance between angling opportunity and sustainable management of the fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is too restrictive. The department disagrees with the comment and responds that the rule strikes a balance between angling opportunity and the sustainable management of the fishery. No changes were made as a result of the comment.

The department received 89 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Raven.

The department received 12 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered har-

vest regulations for largemouth bass on Lake Bellwood. Of the 12 comments, six offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the statewide standard should be implemented. The department disagrees with the comments and responds that the lake is small enough that unlimited harvest of larger fish would be problematic over time. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be one regulation, statewide. The department disagrees with the comment and responds that river systems and impoundments vary greatly across the state; thus, a single harvest regulation for the entire state would be problematic, from a biological perspective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a 14-24 inch slot limit. The department disagrees with the comment and responds that the 14-24 inch slot limit is being eliminated as a regulatory option, and the rule strikes a balance between angling opportunity and the sustainable management of the fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is too restrictive. The department disagrees with the comment and responds that the rule strikes a balance between angling opportunity and the sustainable management of the fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that anglers should be permitted to keep fish greater than 24 inches in length. The department disagrees with the comment and responds that since this smaller reservoir has limited capacity to produce larger bass, overharvest of these bass could occur if numerous bass larger than 24 inches were caught and harvested. No changes were made as a result of the comment.

The department received 79 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Lake Bellwood.

The department received 12 comments opposing adoption of the portion of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Davy Crockett Lake. Of the 12 comments, seven offered a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the statewide standard should be implemented. The department disagrees with the comments and responds that the lake is small enough that unlimited harvest of larger fish would be problematic over time. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be one regulation, statewide. The department disagrees with the comment and responds that river systems and impoundments vary greatly across the state; thus, a single harvest regulation for the entire state would be problematic, from a biological perspective. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a 14-24 inch slot limit. The department disagrees with the comment and responds that the 14-24 inch slot limit is being eliminated as a regulatory option, and the rule strikes a balance be-

tween angling opportunity and the sustainable management of the fishery. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is too restrictive. The department disagrees with the comment and responds that the rule strikes a balance between angling opportunity and the sustainable management of the fishery. No changes were made as a result of the comment.

The department received 78 comments supporting adoption of the proposed amendment to §57.981 that altered harvest regulations for largemouth bass on Davy Crockett Lake.

The department received seven comments opposing adoption of the amendment to §57.981. None of the comments offered a specific reason or rationale for opposing adoption.

The department received 98 comments supporting adoption of the proposed amendment to §57.981.

The department received 11 comments opposing adoption of the proposed amendment to §57.992 that increased the bag limit for king mackerel. Of the comments opposing adoption, 10 articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Five commenters opposed adoption and stated that increasing the daily bag limit will increase waste in the fishery. The department disagrees with the comments and responds that there is no biological evidence that increasing the bag limit by one fish per day will result in negative impacts to the resource and that it is unlawful to waste fish. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the proposed amendment is intended to appease snapper anglers. The department disagrees with the comment and responds that the department monitors and manages king mackerel and snapper as independent populations and does not utilize snapper data to inform king mackerel regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated the stock cannot handle an increase in bag limit and will increase risks to human health. The department disagrees with the comment and responds that there is no biological evidence to suggest that an increase of one fish per angler per day will result in negative impacts to the resource. Data indicate that the king mackerel catch has increased within the last several years and catch per unit effort has remained stable over a longer period of time. The department also disagrees that the proposed rule will have any public health implications. No changes were made as a result of the comment.

Two commenters opposed adoption and stated opposition to any increase in bag limits in general. The department disagrees with the comment and responds that data indicate that the king mackerel catch has increased within the last several years and catch per unit effort has remained stable for a longer period of time; thus the department is confident that the king mackerel fishery can sustain the expected increased harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated opposition to regulatory consistency with federal regulations. The department disagrees with the comment and responds that the proposed amendment provides additional angling opportunity while preventing confusion with respect to compliance and enforcement

and will not result in negative impacts to the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people don't eat king mackerel, so the bag limit increase will just result in the waste of fish. The department disagrees with the comment and responds that it is commission policy to provide the most angling opportunity possible and that waste of fish is a crime. No changes were made as a result of the comment.

One commenter opposed adoption and stated that king mackerel are already targeted by every party boat. The department disagrees with the comment and responds that the rule as adopted will result in greater angling opportunity. No changes were made as a result of the comment.

The department received 130 comments supporting adoption of the proposed amendment to §57.992 that increased the daily bag limit for king mackerel.

The Coastal Conservation Association commented in favor of adoption of the proposed amendments.

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

§57.981. *Bag, Possession, and Length Limits.*

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's residence and is finally processed.

(b) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game and non-game fish except as otherwise provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deck-hand multiplied by the bag limit for each species harvested.

(4) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document (WRD) from the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code. The properly executed WRD document shall accompany the

wildlife resource until it reaches the possessor's residence and is finally processed. The WRD must contain the following information:

(A) the name, signature, address, and fishing license number, as required of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts); and

(D) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 38 inches.

(iii) Maximum length limit: No limit.

(B) Bass:

(i) The daily bag limit for largemouth, smallmouth, spotted, Alabama, and Guadalupe is 5, in any combination.

(ii) Alabama, Guadalupe, and spotted.

(I) No minimum length limit.

(II) No maximum length limit.

(iii) Largemouth and smallmouth.

(I) Minimum length limit: 14 inches.

(II) No maximum length limit.

(iv) Striped (including hybrids and subspecies).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(v) White.

(I) Daily bag limit: 25.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(C) Catfish:

(i) channel and blue (including hybrids and subspecies).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No maximum length limit.

(ii) flathead.

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(iii) gafftopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(D) Cobia.

(i) Daily bag limit: 2.

(ii) Minimum length limit: 37 inches.

(iii) No maximum length limit.

(E) Crappie, black and white (including hybrids and subspecies).

(i) Daily bag limit: 25.

(ii) Minimum length limit: 10 inches.

(iii) No maximum length limit.

(F) Drum, black.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(iv) One black drum over 52 inches may be retained per day as part of the five-fish bag limit.

(G) Drum, red.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20 inches.

(iii) Maximum length limit: 28 inches.

(iv) During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.

(H) Flounder: all species (including hybrids and subspecies).

(i) Daily bag limit: 5.

(ii) Minimum length limit: 14 inches.

(iii) No maximum length limit.

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means.

(I) Gar, alligator.

(i) Daily bag limit: 1.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) During May, no person shall fish for, take, or seek to take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge.

- (J) Grouper.
 - (i) Black
 - (I) Daily bag limit: 4.
 - (II) Minimum length limit: 24 inches.
 - (III) No maximum length limit.
 - (ii) Gag.
 - (I) Daily bag limit: 2.
 - (II) Minimum length limit: 24 inches.
 - (III) No maximum length limit.
 - (iii) Goliath. The take of Goliath grouper is prohibited.
 - (iv) Nassau. The take of Nassau grouper is prohibited.

- (K) Mackerel.
 - (i) King.
 - (I) Daily bag limit: 3.
 - (II) Minimum length limit: 27 inches.
 - (III) No maximum length limit.
 - (ii) Spanish.
 - (I) Daily bag limit: 15.
 - (II) Minimum length limit: 14 inches.
 - (III) No maximum length limit.

- (L) Marlin.
 - (i) Blue.
 - (I) No daily bag limit.
 - (II) Minimum length limit: 131 inches.
 - (III) No maximum length limit.
 - (ii) White.
 - (I) No daily bag limit.
 - (II) Minimum length limit: 86 inches.
 - (III) No maximum length limit.

- (M) Mullet: all species (including hybrids, and subspecies).
 - (i) No daily bag limit.
 - (ii) No minimum length limit.
 - (iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

- (N) Sailfish.
 - (i) No daily bag limit.
 - (ii) Minimum length limit: 84 inches.
 - (iii) No maximum length limit.

- (O) Seatrout, spotted.
 - (i) Daily bag limit:

- (I) for all waters south of F.M. 457 in Matagorda County: 5;
- (II) for all waters north of F.M. 457 in Matagorda County: 10.

- (ii) Minimum length limit: 15 inches.
- (iii) Maximum length limit: 25 inches.
- (iv) Only one spotted seatrout greater than 25 inches may be retained per day. A spotted seatrout retained under this subclause counts as part of the daily bag and possession limit.

- (P) Shark: all species (including hybrids and subspecies).

- (i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

- (I) Daily bag limit: 1.
- (II) Minimum length limit: 64 inches.
- (III) No maximum length limit.

- (ii) Atlantic sharpnose, blacktip, and bonnethead:

- (I) Daily bag limit: 1
- (II) Minimum length limit: 24 inches.
- (III) No maximum length limit.

- (iii) great, scalloped, and smooth hammerhead:

- (I) Daily bag limit: 1.
- (II) Minimum length limit: 99 inches.
- (III) No maximum length limit.

- (iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

- (I) Atlantic angel;
- (II) Basking;
- (III) Bigeye sand tiger;
- (IV) Bigeye sixgill;
- (V) Bigeye thresher;
- (VI) Bignose;
- (VII) Caribbean reef;
- (VIII) Caribbean sharpnose;
- (IX) Dusky;
- (X) Galapagos;
- (XI) Longfin mako;
- (XII) Narrowtooth;
- (XIII) Night;
- (XIV) Sandbar;
- (XV) Sand tiger;
- (XVI) Sevengill;
- (XVII) Silky;
- (XVIII) Sixgill;
- (XIX) Smalltail;

- (XX) Whale; and
(XXI) White.
- (Q) Sheepshead.
(i) Daily bag limit: 5.
(ii) Minimum length limit: 15 inches.
(iii) No maximum length limit.
- (R) Snapper.
(i) Lane.
(I) Daily bag limit: None.
(II) Minimum length limit: 8 inches.
(III) No maximum length limit.
(ii) Red.
(I) Daily bag limit: 4.
(II) Minimum length limit: 15 inches.
(III) No maximum length limit.
(IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.
(iii) Vermilion.
(I) Daily bag limit: None.
(II) Minimum length limit: 10 inches.
(III) No maximum length limit.
- (S) Snook.
(i) Daily bag limit: 1.
(ii) Minimum length limit: 24 inches.
(iii) Maximum length limit: 28 inches.
- (T) Tarpon.
(i) Daily bag limit: 1.
(ii) Minimum length limit: 85 inches.
(iii) No maximum length limit.
- (U) Triggerfish, gray.
(i) Daily bag limit: 20.
(ii) Minimum length limit: 16 inches.
(iii) No maximum length limit.
- (V) Tripletail.
(i) Daily bag limit: 3.
(ii) Minimum length limit: 17 inches.
(iii) No maximum length limit.
- (W) Trout (rainbow and brown trout, including their hybrids and subspecies).
(i) Daily bag limit: 5 (in any combination).
(ii) No minimum length limit.
(iii) No maximum length limit.
- (X) Walleye and Saugeye.
(i) Daily bag limit: 5.
(ii) No minimum length limit.
(iii) No maximum length limit.
(iv) Two walleye or saugeye of less than 16 inches may be retained per day.
- (d) Exceptions to statewide daily bag, possession, and length limits shall be as follows:
(1) Freshwater species.
(A) Bass: largemouth, smallmouth, spotted, and Guadalupe (including their hybrids and subspecies). Devils River (Val Verde County) from State Highway 163 bridge crossing (Bakers Crossing) to the confluence with Big Satan Creek including all tributaries within these boundaries and all waters in the Lost Maples State Natural Area (Bandera County).
(i) Daily bag limit: 0.
(ii) No minimum length limit.
(iii) Catch and release only.
(B) Bass: largemouth, spotted, and Alabama.
(i) Lake Alan Henry (Garza County).
(I) Daily bag limit: 5 largemouth or Alabama bass in any combination.
(II) Minimum length limit: No limit.
(III) It is unlawful to retain more than two bass of less than 18 inches in length.
(ii) Caddo Lake (Marion and Harrison counties).
(I) Daily bag limit: 8 (in any combination with spotted bass).
(II) Minimum length limit: 14 - 18 inch slot limit (largemouth bass); no limit for spotted bass.
(III) It is unlawful to retain largemouth bass between 14 and 18 inches. No more than 4 largemouth bass 18 inches or longer may be retained. Possession limit is 10.
(iii) Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).
(I) Daily bag limit: 8 (in any combination with spotted bass).
(II) Minimum length limit: 14 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.
(iv) Sabine River (Newton and Orange counties) from Toledo Bend dam to a line across Sabine Pass between Texas Point and Louisiana Point.
(I) Daily bag limit: 8 (in any combination with spotted bass).
(II) Minimum length limit: 12 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.
(C) Bass: largemouth.
(i) Chambers, Galveston, Jefferson, and Orange counties including any public waters that form boundaries with adjacent counties.
(I) Daily bag limit: 5.

- (II) Minimum length limit: 12 inches.
- (ii) Lake Conroe (Montgomery and Walker counties).
 - (I) Daily bag limit: 5.
 - (II) Minimum length limit: 16 inches.
 - (iii) Lakes Bellwood (Smith County), Davy Crockett (Fannin County), Kurth (Angelina County), Nacogdoches (Nacogdoches County), Naconiche (Nacogdoches County), Purts Creek State Park (Henderson and Van Zandt counties), and Raven (Walker).
 - (I) Daily bag limit: 5.
 - (II) Maximum length limit: It is unlawful to retain largemouth bass of 16 inches or greater in length. Largemouth bass 24 inches or greater in length may be retained in a live well or other aerated holding device for purposes of weighing but may not be removed from the immediate vicinity of the lake. After weighing the bass must be released immediately back into the lake unless the department has instructed that the bass be kept for donation to the ShareLunker Program.
 - (iv) Lakes Bright (Williamson County), Brushy Creek (Williamson County), Casa Blanca (Webb County), Cleburne State Park (Johnson County), Fairfield (Freestone County), Gilmer (Upshur County), Marine Creek Reservoir (Tarrant County), Meridian State Park (Bosque County), Pflugerville (Travis County), Rusk State Park (Cherokee County), and Welsh (Titus County).
 - (I) Daily bag limit: 5.
 - (II) Minimum length limit: 18 inches.
 - (v) Bedford Boys Ranch Lake (Tarrant County), Buck Lake (Kimble County), Lake Kyle (Hays County), and Nelson Park Lake (Taylor County).
 - (I) Daily bag limit: 0.
 - (II) Minimum length limit: No limit.
 - (III) Catch and release only.
 - (vi) Lakes Grapevine (Denton and Tarrant counties), Jacksonville (Cherokee County), and O.H. Ivie Reservoir (Coleman, Concho, and Runnels counties).
 - (I) Daily bag limit: 5.
 - (II) Minimum length limit: No limit.
 - (III) It is unlawful to retain more than two bass of less than 18 inches in length.
 - (vii) Nasworthy (Tom Green)
 - (I) Daily bag limit: 5.
 - (II) Minimum length limit: 14 - 18 inch slot limit.
 - (III) It is unlawful to retain largemouth bass between 14 and 18 inches in length.
 - (viii) Lakes Athens (Henderson County), Bastrop (Bastrop County), Buescher State Park (Bastrop County), Houston County (Houston County), Joe Pool (Dallas, Ellis, and Tarrant counties), Lady Bird (Travis County), Mill Creek (Van Zandt County), Murvaul (Panola County), Pinkston (Shelby County), Timpson (Shelby County), Walter E. Long (Travis County), and Wheeler Branch (Somervell County).
 - (I) Daily bag limit: 5.

- (II) Minimum length limit: 14 - 21 inch slot limit.
- (III) It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
- (ix) Lakes Fayette County (Fayette County), Fork (Wood Rains and Hopkins counties), Gibbons Creek Reservoir (Grimes County), and Monticello (Titus County).
 - (I) Daily bag limit: 5.
 - (II) Minimum length limit: 16 - 24 inch slot limit.
 - (III) It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
 - (D) Bass: striped and white bass their hybrids and subspecies.
 - (i) Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).
 - (I) Daily bag limit: 5.
 - (II) Minimum length limit: No limit.
 - (III) No more than 2 striped bass 30 inches or greater in length may be retained each day.
 - (ii) Lake Texoma (Cooke and Grayson counties).
 - (I) Daily bag limit: 10 (in any combination).
 - (II) Minimum length limit: No limit.
 - (III) No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.
 - (iii) Red River (Grayson County) from Denison Dam downstream to and including Shawnee Creek (Grayson County).
 - (I) Daily bag limit: 5 (in any combination).
 - (II) Minimum length limit: No limit.
 - (III) Striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released.
 - (iv) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.
 - (I) Daily bag limit: 2 (in any combination).
 - (II) Minimum length limit: 18 inches.
 - (E) Bass: white. Lakes Caddo (Harrison and Marion counties), Texoma (Cooke and Grayson counties), and Toledo Bend (Newton Sabine and Shelby counties) and Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge.
 - (i) Daily bag limit: 25.
 - (ii) Minimum length limit: No limit.
 - (F) Carp: common. Lady Bird Lake (Travis County).
 - (i) Daily bag limit: No limit.
 - (ii) Minimum length limit: No limit.

(iii) It is unlawful to retain more than one common carp of 33 inches or longer per day.

(G) Catfish: blue. Lakes Lewisville (Denton County), Richland-Chambers (Freestone and Navarro counties), and Waco (McLennan County).

(i) Daily bag limit: 25 (in any combination with channel catfish).

(ii) Minimum length limit: 30-45-inch slot limit.

(iii) It is unlawful to retain blue catfish between 30 and 45 inches in length. No more than one blue catfish 45 inches or greater in length may be retained each day.

(H) Catfish: channel and blue catfish, their hybrids and subspecies.

(i) Lake Kyle (Hays County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release and only.

(ii) Lake Livingston (Polk, San Jacinto, Trinity, and Walker counties).

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: 12 inches.

(iii) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

(iv) Lakes Kirby (Taylor County) and Palestine (Cherokee, Anderson, Henderson, and Smith counties).

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five catfish 20 inches or greater in length may be retained each day.

(IV) Possession limit is 50.

(v) Lakes Caddo (Harrison and Marion counties) and Toledo Bend (Newton Sabine and Shelby counties) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five catfish 30 inches or greater in length may be retained each day.

(IV) Possession limit is 50.

(vi) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 15 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No more than one blue catfish 30 inches or greater in length may be retained each day.

(vii) Canyon Lake Project #6 (Lubbock County), North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam, and South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(viii) Community fishing lakes.

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(ix) Bellwood (Smith County), Dixieland (Cameron County), and Tankersley (Titus County).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: 12 inches.

(x) Lake Tawakoni (Hunt, Rains, and Van Zandt counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than seven blue or channel catfish 20 inches or greater may be retained each day, and of these, no more than two can be 30 inches or greater in length.

(I) Catfish: flathead.

(i) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 20 inches.

(ii) Lakes Caddo (Harrison and Marion counties) and Toledo Bend (Newton, Sabine, and Shelby) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 10.

(II) Minimum length limit: 18 inches.

(III) Possession limit: 10.

(J) Crappie: black and white crappie their hybrids and subspecies.

(i) Caddo Lake (Harrison and Marion counties), Toledo Bend Reservoir (Newton Sabine and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(ii) Lake Fork (Wood, Rains, and Hopkins counties) and Lake O' The Pines (Camp, Harrison, Marion, Morris, and Upshur counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 10 inches.

(III) From December 1 through the last day in February there is no minimum length limit. All crappie caught during this period must be retained.

(iii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 37 (in any combination).

(II) Minimum length limit: 10 inches.

(III) Possession limit is 50.

(K) Drum, red. Lakes Braunig and Calaveras (Bexar County), Coletto Creek Reservoir (Goliad and Victoria counties), and Fairfield (Freestone County).

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20.

(iii) No maximum length limit.

(L) Gar, alligator. Falcon International Reservoir (Starr and Zapata counties).

(i) Daily bag limit: 5.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) The provisions of this subparagraph expire on September 1, 2020.

(M) Shad gizzard and threadfin. Trinity River below Lake Livingston (Polk and San Jacinto counties).

(i) Daily bag limit: 500 (in any combination).

(ii) No minimum length limit.

(iii) Possession limit: 1000 (in any combination).

(N) Sunfish: all species. Lake Kyle (Hays County).

(i) Daily bag limit: 0.

(ii) Minimum length limit: No limit.

(iii) Catch and release and only.

(O) Trout: rainbow and brown trout (including hybrids and subspecies).

(i) Guadalupe River (Comal County) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. 306.

(I) Daily bag limit: 1.

(II) Minimum length limit: 18 inches.

(ii) Guadalupe River (Comal County) from the easternmost bridge crossing on F.M. 306 upstream to 800 yards below the Canyon Lake dam.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 - 18 inch slot limit.

(III) It is unlawful to retain trout between 12 and 18 inches in length. No more than one trout 18 inches or greater in length may be retained each day.

(P) Walleye. Lake Texoma (Cooke and Grayson counties).

(i) Daily bag limit: 5.

(ii) Minimum length limit: 18.

(2) Saltwater species. There are no exceptions to the provisions established in subsection (c)(5) of this section.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802210

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2018

Proposal publication date: February 16, 2018

For further information, please call: (512) 389-4775



DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.992

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802211

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2018

Proposal publication date: February 16, 2018

For further information, please call: (512) 389-4775



CHAPTER 65. WILDLIFE SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §§65.42, 65.46, 65.60, 65.64, 65.66

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 22, 2018, adopted amendments to §§65.42, 65.46, 65.60, 65.64, and 65.66, concerning the Statewide Hunting Proclamation. Section 65.42 and §65.64 are adopted with changes to the proposed text as published in the February 16, 2018, issue of the *Texas Register* (43 TexReg 827). Sections 65.46, 65.60, and 65.66 are adopted without changes and will not be republished.

The change to §65.42, concerning Deer, retains the current staggered structure for closing dates of the general season for white-tailed deer. The rule as proposed would have established a uniform closing date for white-tailed deer on a statewide basis. In order to preserve the current chronological relationship with special deer seasons and fall turkey seasons, the proposed amendment also would have altered season dates of the special late season for white-tailed deer, special muzzleloader season for white-tailed deer, and special youth seasons for white-tailed deer. Retaining the current structure for ending dates of the general season for white-tailed deer therefore necessitates conforming changes to those seasons as proposed. The change also clarifies that, with respect to the "antler restriction" provisions applicable to mule deer, the "outside spread" means the outside spread between main beams.

The change to §65.64 retains the current structure for the fall youth-only and general open seasons for turkey, which is necessitated by the change to §65.42 as discussed previously. Fall turkey seasons have historically been concurrent with the general season for white-tailed deer.

The amendment to §65.42, concerning Deer, clarifies regulations for the take of antlerless deer on United States Forest Service (USFS) properties, opens a general season for mule deer in Lynn County, implements an "antler-restriction" regulation (minimum spread requirement) for the take of buck mule deer in six West Texas counties (Briscoe, Childress, Cottle, Floyd, Hall, and Motley), and clarifies the existing antler-restriction rule for white-tailed deer.

The department has become aware of confusion regarding the take of antlerless deer on USFS properties. Some USFS properties are jointly managed by the USFS and the department under the department's public hunting program and regulations contained in Chapter 65, Subchapter H. Other USFS properties (referred to colloquially as "open" USFS lands) are independently managed by USFS and hunting activities are regulated under the county regulations of this subchapter. Generally, USFS prohibits the take of antlerless deer on "open" USFS lands, with the exception of the LBJ National Grasslands (Montague and Wise counties) and Caddo National Grasslands (Fannin County) and in the case of the take of antlerless deer during archery, muzzleloader, and youth-only special seasons. In order to clarify these distinctions, the amendment creates a general prohibition on the take of antlerless deer on USFS lands, with specific exceptions for Caddo National Grasslands, LBJ National Grasslands, and the special seasons noted previously.

The amendment to §65.42 also creates a nine-day general open season for mule deer in Lynn County. The majority of the landscape utilization in Lynn County is large-scale farming and grazing operations, but survey data indicate the existence of mule deer populations that can sustain hunting pressure in those areas where suitable mule deer habitat exists. The literature suggests that the implementation of a buck-only season will have no measurable impact on herd productivity or expansion; however, a measurable change in the age structure of the buck segment of the population is possible if there is intense harvest pressure. The new season will create additional hunter opportunity with no measurable effect on reproduction or distribution of mule deer populations in Lynn County. The amendment also corrects an inadvertent omission from a previous reorganization by noting that antlerless mule deer in the counties listed in subsection (c)(4) may be harvested under a department-issued antlerless mule deer permit as well as under MLDP tag.

The amendment to §65.42 also inserts conforming language into the provisions of subsection (b)(7) to eliminate potential confusion concerning the application of provisions concerning youth-only seasons. Although the rule states that there shall be a youth-only season in all counties where there is a general open season, the provisions of subparagraph (C) concerning bag limits, provisions for the take of antlerless deer, and special requirements, do not specifically mention the counties listed in paragraph (1)(K) and (L) of the current rule.

The amendment to §65.42 also implements an "antler-restriction" regulation in Briscoe, Childress, Cottle, Floyd, Hall, and Motley counties. In this area of the southeast Panhandle, the bag limit for buck mule deer is one. Department data indicate an undesirably excessive harvest of bucks, which creates a skewed sex ratio and an age structure inordinately weighted towards young deer in the buck segment. The amendment prohibits the harvest of buck mule deer with less than a 20-inch outside spread between the main beams, which is intended to allow younger bucks to mature and improve the age structure of the herd. The antler-restriction rule does not apply on properties enrolled in the Managed Lands Deer Program, because on such properties the landowner agrees to a department harvest quota designed to optimally manage deer populations.

Finally, the amendment to §65.42 clarifies the "antler-restriction" rule for white-tailed deer. The antler-restriction rule was originally implemented to address unacceptably high harvest rates of yearling bucks in some counties by protecting young bucks until maturity. The current rule defines a lawful buck as a buck with at least one unbranched antler or a buck with an inside antler spread of at least 13 inches. The department is concerned that in counties where the antler restriction is in effect and the buck bag limit is two or more, a hunter might accidentally or intentionally harvest a buck that is not legal to kill and then take another buck with an inside spread of greater than 13 inches, which defeats the purpose of the rule. Therefore, the amendment clarifies that in each county where the antler restrictions are imposed, it is unlawful to harvest more than one buck that has two branched antlers.

The amendments to §65.46, concerning Squirrel, §65.60, concerning Pheasant, and §65.66, concerning Chachalaca, make the possession limit for those species three times the daily bag limit. In various previous rulemakings the department has made the possession limit three times the daily bag limit for quail and migratory game birds, and now does the same for squirrel, pheasant, and chachalaca for consistency and regulatory simplification. Department harvest and population data indicate no danger of negative population impacts as a result of the amendments.

The amendment to §65.64, concerning Turkey, closes the season for eastern turkey in San Augustine and Upshur counties and shortens the season for eastern turkey by seven days. San Augustine and Upshur counties meet the department's decision metric for season closure, which is the reported harvest of one bird per year or less across a three-year average. At this metric a county is considered to be unable to provide adequate harvest potential. In addition, staff believe the season length for Eastern turkey zone should be curtailed by one week while maintaining the current May 14 closing date. The proposed amendment is based on department harvest and population data and is intended to protect hens from accidental or illegal harvest during incubation and to provide additional time for mating success.

The department received 253 comments opposing adoption of the proposed amendment to §65.42, concerning Deer. Of the 253 comments opposing adoption, 142 provided a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Forty-eight commenters opposed adoption and stated that extending the season would interfere with or destroy quail hunting. The department agrees and had made changes accordingly.

Twenty commenters opposed adoption and stated the season is too long as it is. The department disagrees with the comment and responds that the current season length is not biologically deleterious to white-tailed deer populations. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that the proposal would result in the harvest of bucks that have shed their antlers. The department disagrees with the comment and responds that incidental harvest of shed-antlered bucks is not believed to exert a significant biological impact, based on current harvest data from MLD properties, where harvest is allowed until the last day of February. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that the proposed season extension would interfere with hunters pursuing quarry other than deer. The department agrees with the comment and has made changes accordingly.

Two commenters opposed adoption and stated that deer populations in northeast Texas would not be able to withstand an additional two weeks of hunting pressure. The department disagrees with the comment and responds that although the season extension was not adopted, harvest and population data indicate that the season as proposed would not result in depletion or waste. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that there should be an early muzzleloader season. Although the comment is not germane to the proposal the department disagrees with the comment and responds that the archers overwhelmingly support an early archery season restricted to archery equipment only. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the proposed season extension would moot the efforts of MLDP cooperators. The department disagrees with the comment and responds that although the season extension was not adopted, the benefits of participation in the MLDP include the elimination of personal bag limits, being able to hunt bucks until the end of February, and for those in the Conservation Option, by firearm during the archery season; thus, the department believes that the proposed season extension would not have presented a disincentive to MLDP cooperators. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season in the North Zone should start two weeks earlier. The department disagrees with the comment and responds that although the proposal was not adopted, the purpose of the proposal was to create a unified statewide deer season; opening the season two weeks earlier in the North Zone would make that impossible. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that archery equipment should be allowed during the muzzleloader season. Although the comment is not germane to the proposal, the department disagrees and responds that archers have a

dedicated season of 35 days, as well as the opportunity to use archery equipment during the general season and special late season for antlerless and unbranched antlered bucks. The department believes that this is more than sufficient time for archery enthusiasts to engage in archery hunting. No changes were made as a result of the comments.

One commenter opposed adoption and stated that archery season should be "extended with muzzleloader season." The department interprets the comment as expressing a desire to either hunt by means of archery equipment during a muzzleloader season or to hunt by muzzleloader during an archery season. In either case, the comment is not germane to the proposal. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin later and run one month. The department disagrees with the comment and responds that it is not germane to the proposal.

One commenter opposed adoption and stated that the season for white-tailed deer should end the first weekend in January statewide. The department disagrees with the comment and responds that there is no reason to shorten the season from its current length, as there is no biological indication that the current season results in depletion or waste of the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open the day after Thanksgiving in order to allow for greater reproduction. The department disagrees with the comment and responds that in general, average peak breeding dates in the vast majority of ecoregions in the state occur prior to Thanksgiving. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the diversity of climate and habitat across the landscape makes a single season dangerous. The department disagrees with the comment and responds that department data indicate that the harvest in all areas of the state is either optimal or suboptimal, which indicates that an additional two weeks of hunting in the North Zone is not likely to result in negative population impacts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the archery season should not be eliminated. The department agrees with the comment and responds that archery season was and is unaffected by the proposed rule. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be shortened because of high hunting pressure on small tracts of land. The department disagrees with the comment and responds that there is no biological evidence that the current season structure results in excessive harvest, even in areas of the state characterized by relatively high hunting pressure and small tract sizes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that in northeast Texas the bag limit should be reduced to one buck for five seasons to replenish the herd. The department disagrees with the comment and responds that harvest and population data from northeast Texas do not indicate any negative population trends generally, and that the current harvest strategy is therefore not resulting in depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that losing two weeks in Webb County would hurt hunting. The department agrees with the comment and responds that the proposal would not have affected Webb County. No changes were made as a result of the comment.

One commenter opposed adoption and stated that proposals should be based on science, not politics. The department agrees with the commenter and responds that the rule as proposed, had it been adopted, would not have resulted in negative biological impacts. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a late shotgun-only season. The department disagrees with the comment and responds that it is not germane to the rule-making, but in any event, the late season is intended to allow land managers the opportunity to effectively manage spike and doe populations, which would not be possible if the means were limited to less efficient methods of take, such as shotguns. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the deer population in Rusk County has declined due to the overharvest of does. The department disagrees with the comment and responds that although the comment is not germane to the proposal, department population and harvest data indicate that deer populations in Deer Management Unit (DMU) 17 are steady and not indicating any declining trends. No changes were made as a result of the comment.

One commenter opposed adoption and stated that crossbows should not be lawful during archery season except for hand-capped hunters. The department disagrees with the comment and responds that although the comment is not germane to the proposal, crossbows are a form of archery equipment and the department believes that their inclusion as lawful means during archery season encourages participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed amendment was a money grab. The department disagrees with the comment and responds that the rule as proposed had no fiscal implications for any regulated person. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the archery season should run from October until the middle of January. The department disagrees with the comment and responds that although the comment is not germane to the proposal, because of the inefficient nature of archery equipment and the relatively low number of archery hunters, implementing an archery season running from October through the middle of January would frustrate the achievement of harvest goals intended to keep deer populations in check. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a person should be able to utilize any deer tag at any time during the season. The department interprets the comment to be advocacy for full-season either-sex hunting statewide. Although the comment is not germane to the proposal, the department disagrees and responds that in those areas of the state characterized by high hunting pressure, small property sizes, and fragmented habitat (or any combination of the three), it is biologically necessary to restrict doe harvest to specific times of the season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer season should start no earlier than the weekend that quail season opens. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed season extension would force landowners to allow hunting for two additional weeks, which would cause conflicts with ranching operations. The department disagrees with the comment, and although the proposal was not adopted, responds that the proposal did not require landowners to make their properties available for hunting, but merely allowed hunting for another two weeks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that too many young bucks are being taken illegally. The department disagrees with the comment and responds that there is no causal relationship between season length and the choice of unscrupulous persons to engage in unlawful activity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if anything the South Zone season should be curtailed by two weeks. The department disagrees with the comment and responds that there is no biological reason to shorten the South Zone season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that archery season and the general season should begin one month later. The department disagrees with the comment and responds that although the comment is not germane to the proposal, the timing of the current general season is necessary to provide the greatest opportunity to hunt bucks in rut; running the general season a month later would confound that goal. With respect to the archery season, moving the season one month later would confound the department's harvest objectives, since hunter success with archery equipment is much lower than with firearms and there are many fewer archers than firearm hunters. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the special late season should be muzzleloader-only. The department disagrees with the comment, and although the comment is not germane to the proposal, responds that the special late season is intended to allow land managers to protect habitat by providing a means to efficiently reach harvest goals. Because muzzleloaders are not as efficient as modern firearms, restricting the special late season to muzzleloaders would frustrate the goal of the season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed extension of the season would eliminate the muzzleloader season. Although the proposal was not adopted, the department disagrees with the comment and responds that the rule as proposed retained the 14-day late muzzleloader season in every county where it is currently implemented. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the harvest of unbranched antlered bucks should be limited so those bucks can reach their full potential. Although the comment is not germane to the proposal, the department disagrees and responds that management decisions with respect to harvest are entirely up to landowners and land managers, subject to the regulations of the department. No changes were made as a result of the comment.

One commenter opposed adoption and stated that archery equipment should be lawful during the extended season. Although the proposal was not adopted, the department agrees with the comment and responds that the proposal was to extend the general season, during which all lawful means could be used. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the muzzleloader season should be restricted to open sights. Although the comment is not germane to the proposal, the department disagrees and responds that regulations governing sights on muzzleloaders are not necessary, as harvest during the muzzleloader season is not significant and there is no biological reason to make harvest more difficult. No changes were made as a result of the comment.

One commenter opposed adoption and stated that archery season should open in early September. Although the comment is not germane to the proposal, the department disagrees and responds that the weather in the month of September is not conducive to archery hunting and participation would be minimal. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer populations in Hardin County are substantially lower than before. The department interprets the comment to mean that the population in Hardin County could not sustain the additional two weeks contemplated by the proposal. Although the proposal was not adopted, the department disagrees and responds that population and harvest data in DMU 13 indicate a stable population. No changes were made as a result of the comment.

One commenter opposed adoption and stated that an additional two weeks of muzzleloader season is unnecessary. The department agrees with the comment and responds that the proposal was to extend the general season, not the muzzleloader season (although muzzleloaders are lawful during a general season). No changes were made as a result of the comment.

One commenter opposed adoption and stated that archery equipment should be lawful during all seasons. Although the comment is not germane to the proposal, the department disagrees and responds that the archery season was created to allow archery enthusiasts the opportunity to enjoy a season restricted to archery equipment and the muzzleloader-only open season is similarly intended to do the same for muzzleloader enthusiasts. The department also notes that archery equipment is lawful during the general season and the special late season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the general season should be just the month of November and muzzleloader season should be the month of December with a four-day exception for modern firearms at Christmas. Although the comment is not germane to the proposal, the department disagrees and responds that allowing one month for the use of modern firearms not only would confound the department's harvest goals for white-tailed deer, it would result in decreased participation which would be reflected in reduced license sales and revenue that the department depends upon to manage wildlife resources and enforce conservation law. No changes were made as a result of the comment.

One commenter opposed adoption and stated that archery season should be lengthened. Although the comment isn't germane to the proposal, the department disagrees and responds that harvest during the general season, when firearms may be

used, is much greater than during archery season, which is biologically desirable. Extending archery season would therefore decrease overall harvest, which the department wants to avoid. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal would result in increased harvest of younger legal bucks in counties under the antler restriction regulation, which would prevent those bucks from reaching the peak of maturity. Although the rule was not adopted, the department disagrees with the comment and responds that the antler restriction regulation was intended to protect young bucks from overharvest; thus, the presence of bucks that are lawful indicates that the purpose of the regulation has been achieved. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no muzzleloader season. Although the comment is not germane to the proposal, the department disagrees and responds that muzzleloader season is intended to provide additional harvest opportunity in counties that do not have a special late season for antlerless unbranched antlered bucks but contain deer populations that can withstand limited additional hunting pressure. Because hunter success with muzzleloaders is much less than with modern firearms, muzzleloaders are ideal for such situations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal would result in the overharvest of bucks. The department disagrees with the comment and responds that although the proposal was not adopted, department data do not indicate that the proposal would result in excessive buck harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be shortened, not lengthened. The department disagrees with the comment and responds that the current season is not adequate to reach desired harvest levels; thus, shortening the season would be counterproductive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that antlerless deer should not be lawful during the proposed season extension. Although the proposal was not adopted, the department disagrees and responds that allowing either-sex hunting for an additional two weeks would not result in either depletion or waste. No changes were made as a result of the comment.

One commenter opposed adoption and stated that hunting seasons should protect "breeding seasons." Although the proposal was not adopted, the department disagrees with the comment and responds that the primary purpose of white-tailed deer seasons is to curtail population size and prevent habitat damage from overpopulation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal would push muzzleloader season back and make it less enjoyable to hunt with muzzleloaders. Although the comment is not germane to the proposal, the department disagrees and responds that muzzleloaders are lawful during the general season as well as during the muzzleloader season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the muzzleloader season should occur after the general season. The department agrees with the comment and responds that as proposed as well as under current rule, muzzleloader season

occurs after the general season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the early rut in Brazoria County should be taken into consideration for archery season. Although the comment is not germane to the proposal, the department disagrees and responds that the rut is not a factor in determining when the archery season occurs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal would cause the harvest of pregnant does. Although the proposal was not adopted, the department disagrees with the comment and responds that the timing of deer season in general creates the possibility of the harvest of pregnant does, which is not biologically problematic, as white-tailed deer populations are at or above carrying capacity in most areas of the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that more "doe days" were needed in Van Zandt County. Although the comment is not germane to the proposal, the department disagrees and responds that "doe days" are necessary in Van Zandt County to prevent negative reproductive consequences of overharvest, and that Van Zandt County meets the department's metric for the provision of the most conservative doe harvest short of allowing the harvest of does by permit only. No changes were made as a result of the comment.

One commenter opposed adoption and stated that that there should be no special seasons of any kind. Although the comment is not germane to the rulemaking, the department disagrees with the comment and responds that limited special seasons are provided for enthusiasts of primitive weapons (archery, muzzleloader) to hunt without competition from modern firearms, and for youth-only hunting, in order to provide opportunity for fostering and mentoring. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer seasons should be established by county. The department agrees with the comment and responds that deer seasons are established by county. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bag limits are too liberal and deer populations are decreasing. Although the comment is not germane to the proposal, the department disagrees and responds that tag utilization studies indicate that in most of the state bag limits are irrelevant and that white-tailed populations are stable or increasing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal would lead to habitat damage. Although the proposal was not adopted, the department disagrees and responds that if anything, the longer season would remove more animals from the landscape and protect habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open November 15 and close December 31. No changes were made as a result of the comment. Although the proposal was not adopted, the department disagrees with the comment and responds that the primary purpose of white-tailed deer seasons is to curtail population size and prevent habitat damage from overpopulation. The deer harvest in most parts of the state is insufficient as it is. Reducing the season to 45 days would

therefore be counterproductive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should close January 1. Although the proposal was not adopted, the department disagrees with the comment and responds that the primary purpose of white-tailed deer seasons is to curtail population size and prevent habitat damage from overpopulation. The deer harvest in most parts of the state is insufficient as it is. Closing the season on January 1 would therefore be counterproductive. No changes were made as a result of the comment.

The department received 2,561 comments supporting adoption of the portion of the proposed amendment to §65.42.

The department received 23 comments opposing adoption of the proposed amendment to §65.64, concerning Turkey. Of the 23 comments opposing adoption, 14 provided a specific reason or rationale for opposing adoption. The comments, accompanied by the department's response to each, follow.

Five commenters opposed adoption and stated that shortening the season days before it opens places a burden on hunters who might not know that the season dates have changed. The commenters stated that the changes should not take effect until the 2019 season. The department agrees with the commenters and clarifies that the changes as adopted take effect in 2019. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's real goal is to close the season in Angelina County. The department disagrees with the comment and responds that the department will not eliminate an open season unless the biological data indicate that a season must be closed, and that in any case, the season for eastern turkey in Angelina County was closed last year. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposal eliminates the opportunity to call turkeys and that hunters should be left alone. The department disagrees with the comment and responds that under Parks and Wildlife Code, §61.002, the department is responsible for preventing depletion or waste of wildlife resources, which means that it is sometimes necessary to curtail or even prohibit hunting activities in order to ensure that wildlife populations are not harmed. The department has been concerned for some time about the sustainability of eastern wild turkey populations and has concluded that it is necessary to shorten the season in order to encourage mating success and protect hens during incubation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that he had had success hunting in Upshur County and has seen numerous birds in the area. The department interprets the comment to mean that there are huntable populations of turkey in Upshur County and the department's decision to close the season is misguided. Similarly, another commenter opposed adoption and stated that there are birds in San Augustine County but people just aren't willing to put in the work to find them. The department disagrees with the comments and responds that the closure metric for eastern turkey seasons is the reported harvest of one bird per year or less across a three-year average, and the eastern turkey harvest in both Upshur and San Augustine counties has reached that metric. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should remain as it is Red River County because there are enormous numbers of birds. The department disagrees with the comment and responds that although Red River County has historically exhibited some of the highest densities and highest annual harvest relative to other counties in east Texas, harvest has declined at a similar rate to the rest of the counties where there is an open season for eastern turkey - almost 70% since 2005. Delaying the opening day until April 22 and implementing a three-week season is intended to improve juvenile recruitment, support population growth, and provide maximum hunting opportunity consistent with the principles of sound biological management. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Upshur and San Augustine counties should remain open for the taking of bearded hens. The department disagrees with the comment and responds that not only do these counties meet the criteria for county closure (i.e. one bird or less reported on average over the past three years), but also that bearded hens are typically older adults that are a critical component of reproductive success because of their higher rates of nesting and reneating success and poult survival/recruitment. Therefore, to promote population growth, the season has been closed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if the eastern turkey season is to be shortened, the time should be removed from the front of the season because heat will discourage hunters. The department disagrees with the comment and responds that for such a change to season structure to be effected, it should occur during a time when the largest number of hens are likely to be incubating eggs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that instead of taking seven days away from the beginning of the season, the seven days should be added to the end of the season. The department disagrees with the comment and responds that by late May, most mating has taken place, hens are more readily visible (with or without poults), making them more susceptible to accidental or illegal harvest, and gobblers are not as responsive to calling. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Menard County should be in the South Turkey Zone because mating is over before the season starts. Although the comment is not germane to the proposal, the department disagrees and responds that areas along the western edge of the Edwards Escarpment experience some variability in mating activity that is primarily weather dependent; however, the breeding chronology in these areas is generally more like northern Texas than southern Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that turkey numbers are down because of clearcutting and hurricanes, not hunting. The department agrees that many factors are capable of influencing turkey populations, but disagrees that hunting has no impact and responds that because all factors are additive, there are circumstances in which the attenuation of hunting pressure is useful in stabilizing or increasing population trends. No changes were made as a result of the comment.

The department received 87 comments supporting adoption of the proposed amendment to §65.64.

The department received five comments supporting adoption of the proposed amendments to §§65.46, 65.60, and 65.66 that

increased the possession limits for chachalaca, pheasant, and squirrels, respectively. Of the five comments opposing adoption, one provided a specific reason or rationale for opposing adoption. The commenter stated that all possession limits should be twice the daily bag limit to discourage shooting double limits in a single day. The department disagrees with the comment and responds that the rule is intended to standardize possession limits across a continuum of species, and that in any case, "double bagging" is not believed to be a major problem. No changes were made as a result of the comment.

The department received 94 comments supporting adoption of the proposed amendments.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 42, which allows the department to issue tags for animals allowed by law to be killed during each year or season, including antelope and turkey; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.42. *Deer.*

(a) General.

(1) No person may exceed the applicable county bag limit or the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(A) §65.29 of this title (relating to Managed Lands Deer Program);

(B) use of an antlerless mule deer permit issued under §65.32 of this title (relating to Antlerless Mule Deer Permits);

(C) use of a special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(D) use of special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(2) During an archery-only open season, deer may be taken only by the means described in §65.11(2) and (3) of this title (relating to Lawful Means).

(3) The issuance and use of MLDP tags is prescribed by §65.29 of this title.

(4) Except as provided in Subchapter H of this chapter and subsections (b)(2)(E) and (b)(4) - (6) of this section, the take of antlerless deer is prohibited on USFS lands.

(b) White-tailed deer. The open seasons and bag limits for white-tailed deer shall be as follows.

(1) South Zone. The general open season for the counties listed in this subparagraph is from the first Saturday in November through the third Sunday in January.

(A) In Aransas, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick,

McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (south of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Webb, Willacy, Zapata, and Zavala counties, there is a general open season. The bag limit is five deer, no more than three bucks.

(B) In Atascosa County there is a general open season.

(i) The bag limit is five deer, no more than two bucks; and

(ii) the antler restrictions described in paragraph (3) of this subsection apply.

(2) North Zone. The general open season for the counties listed in this subparagraph is from the first Saturday in November through the first Sunday in January.

(A) In Bandera, Baylor, Bexar, Blanco, Burnet, Callahan, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Haskell, Hays (west of Interstate 35), Howard, Irion, Jones, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Knox, Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mitchell, Nolan, Pecos, Real, Reagan, Runnels, San Saba, Schleicher, Shackelford, Sterling, Sutton, Taylor, Terrell, Throckmorton, Tom Green, Travis (west of Interstate 35), Upton, Uvalde (north of U.S. Highway 90), Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), and Wilbarger counties, the bag limit is five deer, no more than two bucks.

(B) In Archer, Bell (west of IH 35), Bosque, Brown, Clay, Coryell, Hamilton, Hill, Jack, Lampasas, McLennan, Mills, Palo Pinto, Somervell, Stephens, Wichita, Williamson (west of IH 35) and Young counties:

(i) the bag limit is five deer, no more than two bucks; and

(ii) the antler restrictions described in paragraph (3) of this subsection apply.

(C) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hemphill, Hutchinson, Kent, King, Lipscomb, Motley, Ochiltree, Roberts, Scurry, Stonewall, and Wheeler counties, the bag limit is five deer, no more than one buck.

(D) In Brewster, Culberson, Jeff Davis, Presidio, and Reeves counties, the bag limit is four deer, no more than two bucks.

(E) In Comanche, Cooke, Denton, Eastland, Erath, Hood, Johnson, Montague, Parker, Tarrant, and Wise counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) on USFS lands in Montague and Wise counties, antlerless deer may be taken only from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(F) In Angelina, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Goliad (south of U.S. Highway 59), Hardin, Harris, Houston, Jackson (south of U.S. Highway 59), Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, Victoria (south of U.S. Highway 59), Walker, and Wharton (south of U.S. Highway 59) counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) antlerless deer may be taken from opening day through the Sunday immediately following Thanksgiving Day.

(G) In Anderson, Bowie, Brazos, Camp, Cass, Gregg, Grimes, Harrison, Henderson, Lamar, Leon, Madison, Marion, Morris, Nacogdoches, Panola, Red River, Robertson, Rusk, Sabine, San Augustine, Shelby, and Upshur counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) antlerless deer may be taken during the first 16 days of the season.

(H) In Bell (East of IH 35), Burleson, Delta, Ellis, Falls, Fannin, Franklin, Freestone, Hopkins, Hunt, Kauffman, Limestone, Milam, Navarro, Rains, Smith, Titus, Van Zandt, Williamson (East of IH 35), and Wood counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) antlerless deer may be taken from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(I) In Collin, Dallas, Grayson, and Rockwall counties there is a general open season:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) lawful means are restricted to lawful archery equipment and crossbows only, including properties for which MLDP tags have been issued.

(J) In Austin, Bastrop, Caldwell, Colorado, Comal (east of IH 35), De Witt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), and Wilson counties:

(i) the bag limit is four deer, no more than two bucks and no more than two antlerless;

(ii) the antler restrictions described in paragraph (3) of this subsection apply; and

(iii) antlerless deer may be taken by MLDP tag only.

(K) In Andrews, Bailey Castro, Cochran, Dallam, Dawson, Deaf Smith, Gaines, Hale, Hansford, Hartley, Hockley, Lamb, Lubbock, Lynn, Martin, Moore, Oldham, Parmer, Potter, Randall, Sherman, Swisher, Terry, and Yoakum counties, the bag limit is three deer, no more than one buck and no more than two antlerless.

(L) In Crane, Ector, Loving, Midland, Ward, and Winkler counties:

(i) the bag limit is three deer, no more than one buck and no more than two antlerless; and

(ii) antlerless deer may be taken by MLDP tag only.

(M) In all other counties, there is no general open season.

(3) Antler Restrictions. In each county for which antler restrictions are imposed under the provisions of this subsection:

(A) a legal buck is a buck deer with:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater;

(B) no person may take more than one buck with an inside spread of 13 inches or greater; and

(C) a person who takes a buck deer in violation of subparagraph (A)(ii) of this paragraph is prohibited from subsequently harvesting any buck deer with branched antlers on both main beams in that county.

(4) Special Late General Seasons.

(A) There is a special late general season during which harvest is restricted to antlerless and unbranched antlered deer, as follows:

(i) in the counties listed in paragraph (1)(A) and (B) of this subsection: 14 consecutive days starting the first Monday following the third Sunday in January;

(ii) in the counties listed in paragraph (2)(A) - (C) and (E) of this subsection: 14 consecutive days starting the first Monday following the first Sunday in January.

(iii) In all other counties there is no special late general season.

(B) The bag limit during a special late general season is the bag limit established for the county for the general open season and is not in addition to any other bag limit.

(5) Archery-only open seasons.

(A) There shall be an archery-only open season in all counties in which there is an open general season.

(B) The open season is from the Saturday closest to September 30 for 35 consecutive days.

(C) The bag limit in any given county is as provided for that county during the general open season.

(D) No MLDP tag is required to hunt antlerless deer unless MLDP tags have been issued for the property.

(E) Antlerless deer may be taken on USFS lands during an archery-only season.

(6) Muzzleloader-only open seasons, and bag and possession limits shall be as follows. In Anderson, Angelina, Austin, Bastrop, Bell (East of IH 35), Bowie, Brazoria, Brazos, Brewster, Burleson, Caldwell, Camp, Cass, Chambers, Cherokee, Colorado, Comal (East of IH 35), Culberson, Delta, DeWitt, Ellis, Fannin, Falls, Fayette, Fort Bend, Franklin, Freestone, Galvestone, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays (East of IH 35), Henderson, Hopkins, Houston, Hunt, Jackson, Jasper, Jeff Davis, Jefferson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Presidio, Rains, Red River, Reeves, Robertson, Rusk, Sabine, San Augustine,

San Jacinto, Shelby, Smith, Titus, Travis (East of IH 35), Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Williamson (East of IH 35), Wilson and Wood counties, there is an open season during which deer may be taken only with a muzzleloader.

(A) The open season is 14 consecutive days starting the first Monday following the first Sunday in January.

(B) The bag limit is as specified in this section for the general season in the county in which take occurs.

(C) Special provisions:

(i) Buck deer. In any given county listed in this paragraph, all restrictions established in this subsection for the take of buck deer during the general season remain in effect.

(ii) Antlerless deer. In the counties listed in paragraph (2)(J) of this subsection, the take of antlerless deer is by MLDP tag only. In all other counties listed in this paragraph, the bag limit for antlerless deer established in this subsection for the general remains in effect.

(D) Antlerless deer may be taken on USFS lands during a muzzleloader-only season.

(7) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) The early open season is the Saturday and Sunday immediately before the first Saturday in November.

(B) The late open season is 14 consecutive days starting the first Monday following the first Sunday in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraph (2)(A) - (J) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (2)(H) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Other than properties where MLDP tags have been issued under the provisions of §65.29(c)(2), only licensed hunters 16 years of age or younger may hunt deer during the seasons established by this paragraph, and any lawful means may be used.

(F) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(G) Antlerless deer may be taken on USFS lands during special youth-only deer seasons.

(c) Mule deer. The open seasons and bag limits for mule deer shall be as follows:

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Knox, Lipscomb, Moore, Motley, Ochiltrie, Oldham, Potter, Randall, Roberts, Scurry, Sherman, Stonewall, Swisher, and Wheeler counties:

(A) the Saturday before Thanksgiving for 16 consecutive days;

(B) bag limit: one buck; and

(C) antlerless deer may be taken only by Antlerless Mule Deer permit or MLDP tag.

(D) In Briscoe, Childress, Cottle, Floyd, Hall, and Motley counties, no person may harvest a buck deer with an outside spread of the main beams of less than 20 inches.

(2) In Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Presidio, Reagan, Reeves, Upton, Val Verde, Ward, and Winkler counties:

(A) the Friday immediately following Thanksgiving for 17 consecutive days;

(B) bag limit: one buck; and

(C) antlerless deer may be taken only by antlerless mule deer permit or MLDP tag.

(3) In Brewster, Pecos, and Terrell counties:

(A) the Friday immediately following Thanksgiving for 17 consecutive days;

(B) bag limit: two deer, no more than one buck.

(4) In Andrews, Bailey, Castro, Cochran, Dawson, Gaines, Hale, Hockley, Lamb, Lubbock, Lynn, Martin, Parmer, Terry, and Yoakum counties:

(A) the Saturday before Thanksgiving for nine consecutive days;

(B) bag limit: one buck; and

(C) antlerless deer may be taken by antlerless mule deer permit or MLDP tag only.

(5) In all other counties, there is no general open season for mule deer.

(6) Archery-only open seasons and bag and possession limits shall be as follows.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Knox, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Sherman, Stonewall, Swisher, Upton, Val Verde, Ward, Wheeler, and Winkler counties:

(i) from the Saturday closest to September 30 for 35 consecutive days; and

(ii) bag limit: one buck.

(B) In Brewster, Pecos, and Terrell counties:

(i) from the Saturday closest to September 30 for 35 consecutive days.

(ii) bag limit: two deer, no more than one buck. Antlerless deer may be harvested without a permit unless MLDP antlerless tags have been issued for the property.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.64. *Turkey.*

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four, no more than one of which may be an Eastern turkey.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) The counties listed in this subparagraph are in the Fall South Zone. In Aransas, Atascosa, Bee, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kinney (south of U.S. Highway 90), LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (south of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Webb, Zapata, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(C) The counties listed in this subparagraph are in the Fall North Zone. In Archer, Armstrong, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Karnes, Kendall, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) The counties listed in this subparagraph are in the Spring North Zone. In Archer, Armstrong, Baylor, Bell, Borden,

Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kent, King, Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Throckmorton, Tom Green, Travis, Upton, Ward, Wheeler, Wichita, Wilbarger, Williamson, Wise, and Young counties, there is a spring general open season.

(i) Open season: Saturday closest to April 1 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) The counties listed in this subparagraph are in the Spring South Zone. In Aransas, Atascosa, Bandera, Bee, Bexar, Blanco, Brewster, Brooks, Calhoun, Cameron, Comal, Crockett, DeWitt, Dimmit, Duval, Edwards, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hidalgo, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina, Nueces, Pecos, Real, Refugio, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Victoria, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is a spring general open season.

(i) Open season: Saturday closest to March 18 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(C) In Bastrop, Caldwell, Colorado, Fayette, Jackson, Lavaca, Lee, Matagorda, Milam, and Wharton counties, there is a spring general open season.

(i) Open season: from April 1 through April 30.

(ii) Bag limit: one turkey, gobblers only.

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season: the weekend (Saturday and Sunday) immediately preceding the first Saturday in November and from the Monday immediately following the close of the general open season for 14 consecutive days.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for Rio Grande turkey in the counties listed in paragraph (3)(A) and (B) of this subsection.

(i) open seasons:

(I) the weekend (Saturday and Sunday) immediately preceding the first day of the general open spring season; and

(II) the weekend (Saturday and Sunday) immediately following the last day of the general open spring season.

(ii) bag limit: as specified for individual counties in paragraph (3) of this subsection.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Bowie, Cass, Fannin, Grayson, Jasper (other than the Angelina National Forest), Lamar, Marion, Nacogdoches, Newton, Panola, Polk, Red River, and Sabine counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: from April 22 through May 14.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered via the department's internet or mobile application within 24 hours of the time of kill. The department will publish the internet address and information on obtaining the mobile application in generally accessible locations, including the department internet web site (www.tpwd.texas.gov). Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsection (b) or (c) of this section, the season is closed for hunting turkey.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802212

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2018

Proposal publication date: February 16, 2018

For further information, please call: (512) 389-4775



SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 22, 2018, adopted an amendment to §65.81, concerning Disease Detection and Response, without changes to the proposed text as published in the February 16, 2018, issue of the *Texas Register* (43 TexReg 835).

The amendment expands the current CWD (chronic wasting disease) Containment Zone (CZ) in the Texas Panhandle in response to the recent detection of CWD in a free-ranging white-tailed deer in Hartley County. The creation of a CZ imposes certain restrictions on the movement of live deer under department-issued permits and the movement of deer carcasses and

body parts, and enables the department to establish mandatory check stations where hunters must bring harvested deer for CWD testing.

Chronic wasting disease is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. What is known is that CWD is invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease in free-ranging populations correlates with deer population declines and human dimensions research indicates that hunters will avoid areas of high CWD prevalence. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could be significant.

Since the first detection of CWD in Texas in 2012 (in free-ranging mule deer in far West Texas), there have been additional positives in both captive and free-ranging populations in various locations. The department's containment strategy is to react to discoveries by establishing zones within which the movement of live deer under department permits and harvested deer by hunters is restricted.

The department recently received confirmation that a 2.5-year-old white-tailed deer killed by an automobile in Hartley County tested positive for CWD. Both a Surveillance Zone (SZ) and a Containment Zone are currently in effect in portions of Hartley County in response to the detection of CWD in a free-ranging mule deer during the 2015-16 hunting season. The white-tailed deer that tested positive for CWD was killed on the border of the current CZ and SZ; therefore, the department has expanded the current CZ accordingly. The current Surveillance Zone in that area will remain unchanged.

The department received three comments opposing adoption of the proposed amendment. Of the three comments, one offered a reason or rationale for opposing adoption. The commenter stated doubt about the CWD "epidemic." The department disagrees with the comment and responds that it is not aware of any epidemiological characterization by any organization of CWD being epidemic in Texas. No changes were made as a result of the comment.

The department received 43 comments supporting adoption of the proposed amendment.

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

mission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802213

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: June 7, 2018

Proposal publication date: February 16, 2018

For further information, please call: (512) 389-4775

◆ ◆ ◆

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.315, 65.318 - 65.321

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 22, 2018, adopted amendments to §§65.315 and 65.318 - 65.321, concerning the Migratory Game Bird Proclamation. Sections 65.315, 65.318, and 65.320 are adopted with changes to the proposed text as published in the February 16, 2018, issue of the *Texas Register* (43 TexReg 837). Sections 65.319 and 65.321 are adopted without changes and will not be republished.

The change to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season, alters the season dates in the South Dove Zone. As proposed, the season in the South Dove Zone would have opened on September 14, 2018, and run until November 4, 2018, with a winter segment opening on December 19, 2018, and running until January 21, 2019. As a result of public comment, the commission decided to adopt a season running from September 14 - October 30, 2018, and December 14, 2018 - January 21, 2019.

The change to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, corrects an error in the season dates for the youth-only waterfowl seasons, which were inadvertently indicated as dates in November of 2019 instead of 2018.

The change to §65.320, concerning Extended Falconry Season--Late Season Species, corrects an error in the season dates

for the North and South Ducks Zones, which were inadvertently indicated as dates in 2018 instead of 2019.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C. Parks and Wildlife Code, §64.022, authorizes the Commission to delegate rulemaking authority to the Executive Director. Department regulations (31 TAC §65.313(f)) authorize the Executive Director, after notification of the Chairman of the Commission, to engage in rulemaking.

The amendments to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season and §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, retain the season structure and bag limits for all migratory game birds from last year (with three exceptions) while adjusting the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

Two exceptions to last year's season structures affect dove seasons. The federal frameworks now allow the regular season in the South Dove Zone to open as early as September 14. Department survey data indicate that hunters prefer the earliest opening date possible in the South Dove Zone; therefore, the amendment implements a season in which the fall segment opens on September 14 (eight days earlier than last year) but closes five days earlier than last year, with those five days added to the front end of the winter segment. Additionally, the amendment removes a week from the end of the winter segment in the Central and North dove zones and adds it to the beginning of the winter segment in both zones. Both exceptions are intended to provide more hunting opportunity.

The amendment to §65.315 also implements a 16-day statewide teal season to run from September 15-30, 2018. In addition, the amendment implements a 16-day early Canada goose season in the Eastern Zone, also to run from September 15-30, 2018.

The remaining exception to last year's seasons is the increase in the daily bag and possession limits for pintail ducks. This year, the Service, based on breeding waterfowl population surveys from 2017, determined that a liberalization of the bag limit for pintails is warranted; therefore, the daily bag limit has been increased to two pintails, with a possession limit of six.

With respect to geese, the season structure (adjusted for calendar shift) and bag and possession limits from last year are retained.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates to reflect calendar shift.

The amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates to reflect calendar shift.

The amendment to §65.321, concerning Special Management Provisions, adjusts the dates for the conservation season on light geese to account for calendar shift.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service. It is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the Service frameworks in order to provide maximum hunter opportunity.

The department received 169 comments opposing the portion of the proposed amendment to §65.315 that established the dates for dove seasons. Of the comments, 47 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that around Lubbock there are doves in November, but not in January. Another commenter opposed adoption and stated that in Archer County there are no birds after October. Similarly, another commenter opposed adoption and stated that cold fronts drive the birds out while the season is closed for the split between segments, and another commenter opposed adoption and stated that Victoria County should be in the North Dove Zone because early cold fronts cause the doves to migrate south. The department disagrees with the comments and responds that because dove migration is greatly influenced by weather patterns, there can be high variability in migration patterns from one year to the next. Dove season dates are intended to optimize hunter opportunity throughout the entire zone, taking into account the seasonality of dove migration. No changes were made as a result of the comments.

One commenter opposed adoption and stated that lawful hunting hours should be half-day for the first two weeks of the season. The department disagrees with the comment and responds that hunter survey data indicate a strong preference for full-day dove hunting. No changes were made as a result of the comment.

One commenter opposed adoption and stated that days should not be taken from November in the South Dove Zone. The department disagrees with the comment and responds that because hunter preference is for the earliest opening day possible in the South Zone and the federal frameworks now allow the season to open September 14, days must be removed from another part of the season in order to avoid exceeding the total number of days allowed for dove hunting under the federal frameworks. The commission decided to close the fall segment in the South Zone on October 30 (rather than November 4) and add those days to the front end of the winter segment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that outdoor opportunities are limited enough because of hunters. Although the comment is not germane to the proposal, the department disagrees with the comment and responds that hunting does not for the most part interfere with nonconsumptive outdoor recreation. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season should begin earlier. The department disagrees with the comments and responds that the season in all zones begins on the earliest date allowable under the federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the weather in January limits hunting opportunities. The department disagrees with the comment and responds that the weather is beyond the

department's control. No changes were made as a result of the comment.

Six commenters opposed adoption and stated the fall segment should not be shortened. The department agrees with the comment and responds that the rule as proposed did not, and as adopted does not, contain a shortened fall segment in any zone. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that the fall segment should be left as it is and a week added to January. The department disagrees with the comment and responds that the season as proposed and adopted utilized the total days of hunting allowed under the federal frameworks; thus, additional days cannot be added. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that taking a week from the fall segment and adding it to the winter segment would hurt hunters in the North Dove Zone. The department agrees with the comments and responds that the rule as proposed did not, and as adopted does not, affect the North Dove Zone. No changes were made as a result of the comments.

One commenter opposed adoption and stated that dove season should close before deer and duck seasons open. The department disagrees with the comment and responds that concurrent seasons offer the greatest possible hunting opportunity and are not believed to significantly interfere with one another. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a week should be added to the fall segment. The department disagrees with the comment and responds that the season as proposed and as adopted utilizes all available days of hunting under the federal frameworks; thus, additional days cannot be added. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are no birds at the end of the season. The department disagrees with the comment and responds that because dove migration is greatly influenced by weather patterns, there can be high variability in migration patterns from one year to the next. As noted previously, dove season dates are intended to optimize hunter opportunity throughout the entire zone, taking into account the seasonality of dove migration. No changes were made as a result of the comment.

One commenter opposed adoption and stated a preference for a longer fall segment. The department disagrees with the comment and responds that additional days cannot be added to the fall segment without reducing the length of the winter segment, as the federal frameworks allow a maximum of 90 days of hunting for dove. Survey data indicate a preference for the winter segment to encompass the holiday weekends. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no reason to remove a week of hunting opportunity. The department agrees with the comment and responds that the rule as proposed did not and as adopted does not reduce the overall amount of hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that adding days in January is not helpful. The department agrees with the comment and responds that the rule as proposed did not and as adopted does not add days in January in any dove zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bag limits should be increased. The department disagrees with the comment and responds that as proposed and as adopted, the bag limits are the maximum allowable under the federal frameworks. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated that all seasons should begin on September 1. The department disagrees with the comments and responds that the season opener in each zone is established on the earliest date possible under the federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the Special White Wing Dove Area (SWWDA) should not have been expanded. Although the comment is not germane to the proposal, the department disagrees with the comment and responds that harvest survey results from 2017 indicate the highest white-winged dove harvest and SWWDA hunting participation on record. Given that the majority of dove harvested are taken in September, the purpose of the SWWDA expansion was to provide as much hunter opportunity as possible throughout the entire month of September for hunters in the south. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that September 14 is too early for the season to open, as doves have not yet begun to migrate into deep South Texas at that time. The department disagrees with the comments and responds that hunter opinion surveys indicate a strong preference for the earliest opening day possible under the federal frameworks and department harvest data indicate that the vast majority of dove harvest occurs in September. No changes were made as a result of the comments.

One commenter opposed adoption and stated that boundaries between the central and south zones should be reconfigured. The department disagrees with the comment and responds that the commission does not have the authority to independently alter zone boundaries, which must be approved in advance by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open September 1 and run until November 30, reopening on January 1 and running until January 31. The department disagrees with the comment and responds that dove seasons in Texas cannot exceed 90 days under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the "extra week" should be added to the end of the winter segment in the South Zone. The department disagrees with the comment and responds that there is no "extra week," only the opportunity to open the fall segment earlier. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed seasons conflict with deer season. The department disagrees with the comment and responds that the commission policy is to maximize hunting opportunity where possible within the tenets of sound biological management, which means that in some cases, seasons for different species will overlap or be concurrent. No changes were made as a result of the comment.

One commenter opposed adoption and stated that white wing doves are nonexistent in the South Dove Zone. The department disagrees with the comment and responds that 2016-17 harvest data indicate that nearly half of the approximately 3 million white-

winged dove harvested in Texas were harvested in the South Zone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that any additional days of hunting opportunity should be added to the winter segment. The department disagrees with the comment and responds that hunter preference is overwhelmingly in favor of the earliest opening day possible under the federal frameworks; thus, the additional opportunity has been included in the fall segment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that hunting days should not be removed from December and moved to January in the Central Dove Zone. The department agrees with the comment and responds that such an action was not contemplated by the proposal and is not implemented in this adoption. No changes were made as a result of the comment.

The department received 1,695 comments supporting the portion of the proposed amendment to §65.315 that established dove season dates.

The department received 41 comments opposing the portion of the proposed amendment to §65.318 that raised the daily bag limit for pintail ducks. Of the 41 comments, 19 opposed adoption and stated in similar language that the daily bag limit should remain at a single bird per day for another year, or, alternatively, until populations can recover. The department disagrees with the comments and responds that commission policy is to adopt the most liberal bag limits possible under the federal frameworks, and that staff concurs with the assessment of the Service that pintail populations can withstand the additional harvest. No changes were made as a result of the comment.

The department received 817 comments supporting adoption of the portion of the proposed amendment to §65.318 that raised the daily bag limit for pintail ducks.

The department received 56 comments opposing adoption of various portions of the proposed amendment to §65.318 that established provisions for various species of migratory game birds other than the proposed bag limit increase for pintail ducks. Of the 56 comments, 43 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the early seasons for teal and Canada goose season should open on September 8. The department disagrees with the comment and responds that department surveys indicate strong hunter preference for a season that encompasses the last three weekends of September. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in all duck zones should open a week later and run one week longer in February. The department disagrees with the comment and responds that the federal frameworks do not allow duck seasons in Texas to extend past the last Sunday in January. No changes were made as a result of the comment.

One commenter opposed adoption and stated that duck seasons in the north and south zones should be concurrent. The department disagrees with the comments and responds that the purpose of staggered splits is to provide additional hunting opportunity by ensuring that hunting opportunity is available in one zone while the other is closed. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season in the South Duck Zone should be longer. The department disagrees with the comments and responds that the season as adopted runs to the last day of hunting allowed under the federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season in the North Duck Zone should open a week earlier because "that's when the ducks are there." The department disagrees with the comment and responds that department harvest data show that harvest in the North Duck Zone is lowest in November and highest in January. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the split between duck season segments should be two weeks in length and the winter segment should be extended by one week. The department disagrees with the comment and responds that hunter surveys indicate a preference for as many full weekends of hunting opportunity as possible. Also, the federal frameworks do not allow duck hunting after the last Sunday in January. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the daily bag limit for ducks should be reduced to five birds to reduce hunting pressure. The department disagrees with the comments and responds that the federal frameworks by intention are biologically conservative and the commission policy is to adopt the most liberal bag limits possible under the federal frameworks, consistent with the tenets of sound biological management. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the seasons in the South Duck Zone and Eastern Goose Zone should end one week earlier in order to enhance nesting success and provide more time for harvest during the Light Goose Conservation Order. The department disagrees with the comment and responds that department surveys indicate a strong hunter preference for duck seasons to run to the end date under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "breeding numbers are incorrect" and duck seasons should be reduced to 39 days with a three-bird bag limit. The department disagrees with the comment and responds that breeding survey data is the best available data and is not believed to be erroneous, that there is no biological reason to shorten the season or reduce bag limits and no biological evidence that the department is aware of to suggest that such an action is necessary, and that hunter preference and commission policy are to adopt the most liberal provisions possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that wood ducks should be lawful game species during the early September teal season. The department disagrees with the comment and responds that under the federal frameworks, teal are the only duck species that can be hunted during the early September teal season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the first two weeks of the duck season should be moved to the end of the season. The department disagrees with the comment and responds that the federal frameworks do not allow duck hunting past the last Sunday in January. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the duck season should be extended by two weeks in all zones. The department disagrees with the comment and responds that the federal frameworks do not allow duck hunting past the last Sunday in January. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in the South Duck Zone should open one week later. The department disagrees with the comment and responds that delaying the season would result in an overall loss of hunting opportunity, since the federal frameworks do not allow hunting after the last Sunday in January. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all duck seasons should open on the same day. The department disagrees with the comment and responds that harvest data indicate that for the North Duck Zone, harvest is lowest in November and highest in January, while conversely, harvest in the South Zone is highest in January and lowest in November. Therefore, season structures that provide for optimal hunting opportunity during those times (including splits) have been selected. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because of "global warming," the duck season should be delayed by one week and the splits should be eliminated. The department disagrees with the comment and responds that the split between season segments is designed to allow birds to rally and recongregate, which improves harvest success during the second segment of the season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that snow goose populations are plummeting and that half-day hunting with a daily bag limit of ten birds should be implemented. The department disagrees with the comment and responds that there is no biological reason to reduce lawful shooting hours or reduce bag limits, no biological evidence that the department is aware of to suggest that such an action is necessary, and that hunter preference and commission policy are to adopt the most liberal provisions possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit for white-fronted geese should be three birds. The department disagrees with the comment and responds that under the federal frameworks a three-bird bag limit is possible only if the length of the season is reduced. Department survey data indicate hunter preference for more days of opportunity with a smaller bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit for snow geese should be dropped to "5-10" birds. The department disagrees with the comment and responds that because snow goose populations must be reduced in order to prevent continued degradation of Canadian nesting grounds, a bag limit reduction is undesirable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for white-fronted geese should be reduced and the bag limit increased, similar to the season structure in Arkansas. The department disagrees with the comment and responds that department surveys indicate hunter preference is for the longer season and smaller bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the sandhill crane season in Zone A should be concurrent with the season for dark geese in the Western Goose Zone. The department disagrees with the comment and responds that geese and sandhill cranes have different migration chronologies (with geese arriving later than cranes) and the department has selected season dates to provide maximum opportunity for hunters of both species. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the sandhill crane season in Zone C should be longer. The department disagrees with the comments and responds that under the federal frameworks the season length in Zone C cannot exceed 37 days. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the closed area for sandhill crane hunting should be opened because "they are everywhere." The department disagrees with the comments and responds that the federal frameworks stipulate that the southeastern part of Texas be closed to hunting for sandhill cranes and that the commission cannot independently alter that closure. No changes were made as a result of the comments.

One commenter opposed adoption and stated that a week of opportunity should be removed from the front end of the snipe season and added to the back end of the season. The department disagrees with the comment and responds that snipe season dates are set by migration timing; thus, the season dates are selected in such a way as to capture the peak of the migration as well as the maximum number of weekends available. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the hunting lease license should be eliminated in favor of \$10,000 outfitter license. Although the comment is not germane to proposed rule, the department disagrees with the comment and responds that the hunting lease license is required by statute and the commission does not have the authority to eliminate that requirement. Similarly, the department does not possess the statutory authority to create an outfitter license. No changes were made as a result of the comment.

The department received 543 comments supporting adoption of various portions of the proposed amendment to §65.318 that established provisions for various species of migratory game birds other than the proposed bag limit increase for pintail ducks.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.315. *Open Seasons and Bag and Possession Limits--Early Season.*

(a) Rails.

(1) Dates: September 15-30, 2018 and November 3 - December 26, 2018.

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 45 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 75 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - November 4, 2018 and December 21, 2018 - January 14, 2019.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 45 mourning doves, white-winged doves, and white-tipped doves (white-fronted) in the aggregate, including no more than 6 white-tipped (white-fronted) doves in possession.

(2) Central Zone.

(A) Dates: September 1 - November 4, 2018 and December 21 - January 14, 2019.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped (white-fronted) doves per day.

(C) Possession limit: 45 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than 6 white-tipped (white-fronted) doves in possession.

(3) South Zone and Special White-winged Dove Area.

(A) Dates: September 1, 2, 8, and 9, 2018;

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two mourning doves and two white-tipped (white-fronted) doves per day.

(ii) Possession limit: 45 white-winged doves, mourning doves, and white-tipped (white-fronted) doves in the aggregate to include no more than 6 mourning doves and 6 white-tipped (white-fronted) doves in possession.

(B) Dates: September 14 - October 30, 2018; and December 14, 2018 - January 21, 2019.

(i) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped (white-fronted) doves per day.

(ii) Possession limit: 45 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than 6 white-tipped (white-fronted) doves in possession.

(c) Gallinules.

(1) Dates: September 15 - 30, 2018 and November 3 - December 26, 2018.

(2) Daily bag and possession limits: 15 in the aggregate per day; 45 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 15 - 30, 2018.

(2) Daily bag and possession limits: six in the aggregate per day; 18 in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2018 - January 31, 2019. The daily bag limit is three. The possession limit is nine.

(h) Wilson's snipe (Common snipe): October 27, 2018 - February 10, 2019. The daily bag limit is eight. The possession limit is 24.

(i) Canada geese: September 15 - 30, 2018 in the Eastern Goose Zone as defined in §65.317(b) of this title (relating to Zones and Boundaries for Late Season Species). The daily bag limit is five. The possession limit is 15.

§65.318. *Open Seasons and Bag and Possession Limits--Late Season.*

Except as specifically provided in this section, the possession limit for all species listed in this section shall be three times the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards (only two of which may be hens); three wood ducks; three scaup (lesser scaup and greater scaup in the aggregate); two redheads; two pintail; two canvasbacks; and one "dusky" duck (mottled duck, Mexican like duck, black duck and their hybrids) during the seasons established in subparagraphs (A)(ii), (B)(ii), and (C)(ii) of this paragraph. For all other species not listed, the bag limit shall be six. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit:

(i) all species other than "dusky ducks": October 27 - 28, 2018 and November 2, 2018 - January 27, 2019.

(ii) "dusky ducks": November 5, 2018 - January 27, 2019.

(B) North Zone:

(i) all species other than "dusky ducks": November 10 - 25, 2018 and December 1, 2018 - January 27, 2019.

(ii) "dusky ducks": November 15 - 25, 2018 and December 1, 2018 - January 27, 2019.

(C) South Zone:

(i) all species other than "dusky ducks": November 3 - 25, 2018 and December 8, 2018 - January 27, 2019.

(ii) "dusky ducks": November 8 - 25, 2018 and December 8, 2018 - January 27, 2019.

(2) Geese.

(A) Western Zone.

(i) Light geese: November 3, 2018 - February 3, 2019. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 3, 2018 - February 3, 2019. The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(B) Eastern Zone.

(i) Light geese: November 3, 2018 - January 27, 2019. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) Season: November 3, 2018 - January 27, 2019;

(II) Bag limit: The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: October 27, 2018 - January 27, 2019. The daily bag limit is three. The possession limit is nine.

(B) Zone B: November 23, 2018 - January 27, 2019. The daily bag limit is three. The possession limit is nine.

(C) Zone C: December 15, 2018 - January 20, 2019. The daily bag limit is two. The possession limit is six.

(4) Special Youth-Only Season. There shall be a special youth-only waterfowl season during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 16 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraphs (1) and (2) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 20 - 21, 2018;

(B) North Zone: November 3 - 4, 2018; and

(C) South Zone: October 27 - 28, 2018.

§65.320. *Extended Falconry Season--Late Season Species.*

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 28 - February 11, 2019;

(C) South Duck Zone: January 28 - February 11, 2019.

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and nine birds, respectively, singly or in the aggregate.

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

Filed with the Office of the Secretary of State on May 18, 2018.

TRD-201802214

Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

Effective date: September 1, 2018

Proposal publication date: February 16, 2018

For further information, please call: (512) 389-4775



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 281 (§§281.1 - 281.13, 281.15, 281.17 - 281.23, 281.30 - 281.34, 281.60 - 281.68), concerning Administrative Practices and Procedures, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Megan Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., July 27, 2018.

TRD-201802208

Allison Vordenbaumen Benz, R.Ph.

Executive Director

Texas State Board of Pharmacy

Filed: May 18, 2018



The Texas State Board of Pharmacy files this notice of intent to review Chapter 311 (§311.1 and §311.2), concerning Code of Conduct, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Megan Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., July 27, 2018.

TRD-201802207

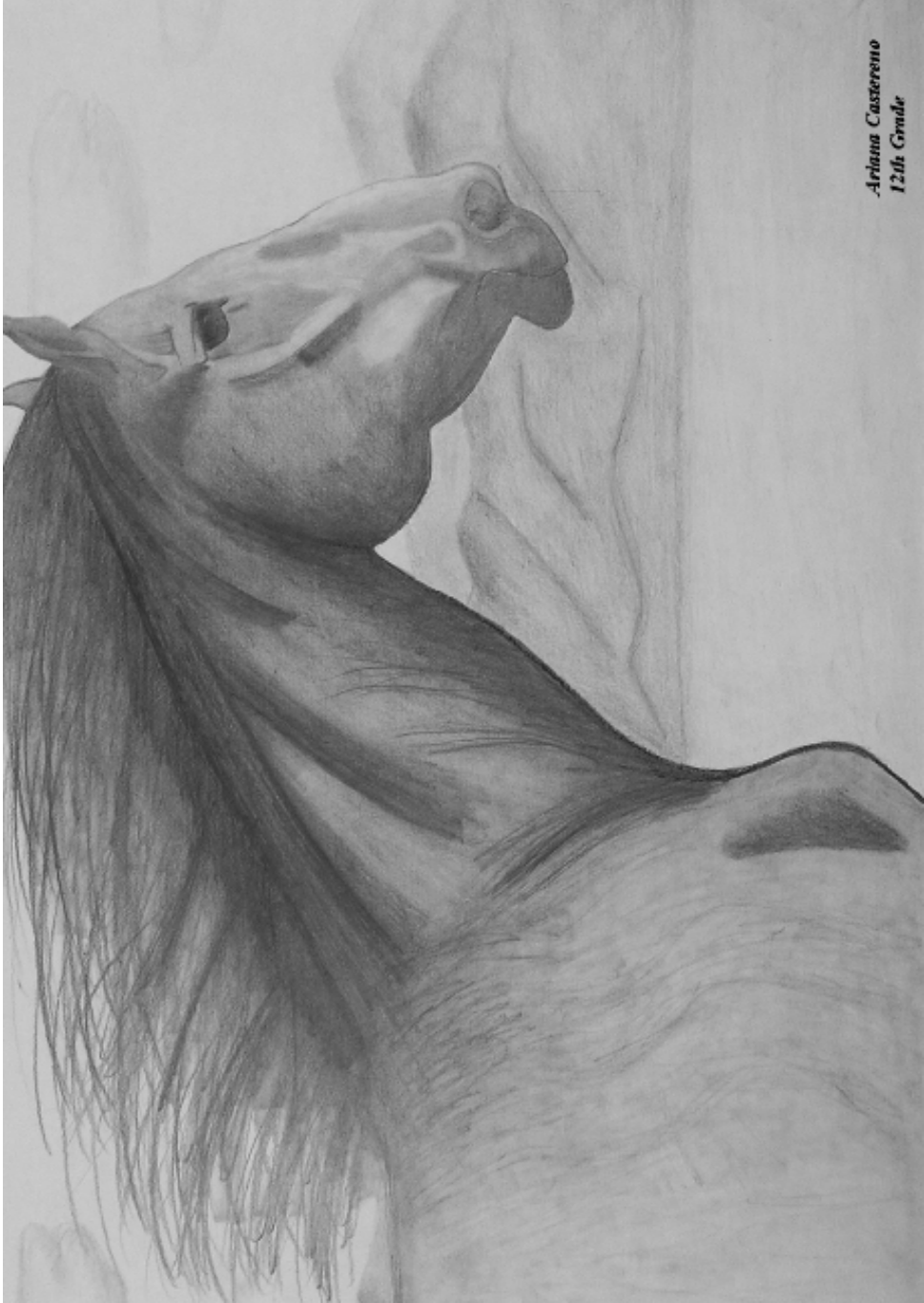
Allison Vordenbaumen Benz, R.Ph.

Executive Director

Texas State Board of Pharmacy

Filed: May 18, 2018





*Ariana Casereno
12th Grade*

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/28/18 - 06/03/18 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/28/18 - 06/03/18 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/18 - 06/30/18 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/18 - 06/30/18 is 5.00% for commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201802239

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 22, 2018



Deep East Texas Council of Governments

Harvey MOD Hearing

Deep East Texas Council of Governments is soliciting public comments in order to develop a Method of Distribution for Community Development Block Grants. These funds are related to Presidential Disaster Declaration 4332 - Hurricane Harvey.

Written and oral comments regarding the MOD will be taken at public hearings scheduled for the following dates, times and locations:

Tuesday, May 29, 2018, at 6:00 p.m. at the Jasper County Justice of Peace Pct. 4 Courtroom, 33625 US-96, Buna, TX 77612.

Wednesday, May 30, 2018, at 6:00 p.m. at City of Shepherd Community Center, 11020 Hwy 150, Shepherd, TX 77371.

Additional written comments must be received by DETCOG by 4:30 p.m. on Wednesday, May 30, 2018, Attn: Bob Bashaw, Regional Planner, 210 Premier Drive, Jasper, Texas 75951.

For information call (409) 384-5704 ext. 5302.

TRD-201802250

Lonnie Hunt

Executive Director

Deep East Texas Council of Governments

Filed: May 22, 2018



Texas Council for Developmental Disabilities

Request for Proposals: Texas Council for Developmental Disabilities Aging Projects

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to three organizations to implement Aging Projects.

The purpose of offering funding for the projects described in this Request for Proposals (RFP) is to identify and address the needs of aging caregivers and older adults with developmental disabilities for both informal and formal supports.

TCDD has approved funding up to \$175,000 per organization, per year, for up to 5 years. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at www.DDSuite.org. More information about TCDD may be obtained through TCDD's website at www.tcdd.texas.gov. All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at Danny.Fikac@tcdd.texas.gov. Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through www.DDSuite.org by September 7, 2018. Proposals will not be accepted after the due date.

TRD-201802257

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: May 23, 2018



Request for Proposals: Texas Council for Developmental Disabilities Health and Wellness Projects

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to two organizations to implement Health and Wellness Projects.

The purpose of offering funding for the projects described in this Request for Proposals (RFP) is to implement a project intended to create a long-term impact that benefits people with developmental disabilities by improving and/or maintaining their health and wellness.

TCDD has approved funding up to \$200,000 per organization, per year, for up to 5 years. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act.

Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at www.DDSuite.org. More information about TCDD may be obtained through TCDD's website at www.tcd.d.texas.gov. All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at Danny.Fikac@tcd.d.texas.gov. Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through www.DDSuite.org by September 7, 2018. Proposals will not be accepted after the due date.

TRD-201802263

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: May 23, 2018



Request for Proposals: Texas Council for Developmental Disabilities Statewide Community Services Peer Support Specialists Projects

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one organization to implement Statewide Community Services Peer Support Specialists Projects.

The purpose of offering funding for the projects described in this Request for Proposals (RFP) is to develop and pilot a peer supports training program for individuals who live independently with the use of Home and Community Based Services (HCBS) so they understand their options and can lead their own person centered planning process.

TCDD has approved funding up to \$100,000 for year 1 and up to \$125,000 for years 2-4. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained at www.DDSuite.org. More information about TCDD may be obtained through TCDD's website at www.tcd.d.texas.gov. All questions pertaining to this RFP should be directed in writing to Danny Fikac, Planning Specialist, via email at Danny.Fikac@tcd.d.texas.gov. Mr. Fikac may also be reached by telephone at (512) 437-5415.

Deadline: Proposals must be submitted through www.DDSuite.org by September 7, 2018. Proposals will not be accepted after the due date.

TRD-201802265

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: May 23, 2018



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is July 2, 2018. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on July 2, 2018. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Angel Zolorzano; DOCKET NUMBER: 2018-0077-LII-E; IDENTIFIER: RN109765701; LOCATION: Joshua, Johnson County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing to the public that it can perform services for which a license is required unless it holds a current license, or unless it employs an individual who holds a current license; PENALTY: \$262; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Cadre Material Products, LLC; DOCKET NUMBER: 2018-0162-OSS-E; IDENTIFIER: RN105793871; LOCATION: Voca, McCulloch County; TYPE OF FACILITY: on-site sewage facility installer; RULES VIOLATED: 30 TAC §285.3(a) and Texas Health and Safety Code, §366.004 and §366.051(a), by failing to obtain authorization prior to constructing, altering, repairing, extending, or operating two on-site sewage facilities; PENALTY: \$770; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Celanese Ltd.; DOCKET NUMBER: 2018-0124-AIR-E; IDENTIFIER: RN100227016; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §115.212(a)(3)(B) and §122.143(4), Federal Operating Permit Number O1893, Special Terms and Conditions Numbers 1.A and 31, and Texas Health and Safety Code, §382.085(b), by failing to comply with the leak-free requirements for all land-based volatile organic compounds transfer to or from transport vessels; PENALTY: \$9,675; ENFORCEMENT COORDINATOR: Richard

Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Beaumont; DOCKET NUMBER: 2017-1770-MWD-E; IDENTIFIER: RN101612224; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$9,150; Supplemental Environmental Project offset amount of \$9,150; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: City of Smithville; DOCKET NUMBER: 2016-2106-MWD-E; IDENTIFIER: RN102178209; LOCATION: Smithville, Bastrop County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), and 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010286003, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater from the collection system into or adjacent to any water in the state; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010286003, Monitoring and Reporting Requirements Numbers 7.a. and 7.b.i., by failing to notify the TCEQ of any noncompliance which may endanger human health, safety or the environment within 24 hours of becoming aware of any noncompliance, orally or by facsimile transmission, and submit written notification within five working days of becoming aware of any noncompliance; 30 TAC §305.125(1) and TPDES Permit Number WQ0010286003, Permit Conditions Numbers 2.e. and 4.d., by failing to report and obtain authorization from the commission prior to accepting or generating wastes that are not described in the permit application; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010286003, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010286003, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0010286003, Effluent Limitations and Monitoring Requirements Number 2, by failing to monitor effluent at the intervals specified in the permit; 30 TAC §305.125(1) and (5) and §317.3(a) and TPDES Permit Number WQ0010286003, Operational Requirements Number 1, by failing to ensure that all lift stations are intruder-resistant with a controlled access; and 30 TAC §317.4(a)(8) and §317.7(i), by failing to equip wash-down hoses with atmospheric vacuum breakers; PENALTY: \$29,351; Supplemental Environmental Project offset amount of \$23,481; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(6) COMPANY: Comal Independent School District; DOCKET NUMBER: 2018-0095-MWD-E; IDENTIFIER: RN103932638; LOCATION: Comal County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0014295001, Special Provisions, Numbers 6 and 8, by failing to properly operate and maintain the wastewater land application area vegetative cover; 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0014295001, Special Provisions, Number 9, by failing to properly operate and maintain the wastewater land application area drip irrigation system; and 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0014295001, Special Provisions, Number 21, by failing to implement the best management practices cited in the facility's Site Preparation Plan; PENALTY: \$2,800; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549;

REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: DEANVILLE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0200-PWS-E; IDENTIFIER: RN101442085; LOCATION: Deanville, Burleson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meters for Well Numbers 1, 3, and 4 at least once every three years; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine the air-water-volume for the pressure tank; 30 TAC §290.46(f)(2), (3)(A)(i)(II), (ii)(II) and (iv) and (B)(iii), by failing to maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; and 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more pumps that have a total capacity of 2.0 gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; PENALTY: \$624; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2018-0011-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1954, General Terms and Conditions and Special Terms and Conditions Number 15, and New Source Review Permit Numbers 7699 and PSDTX226M7, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: GREEN ACRES RV PARK and RENTALS LLC; DOCKET NUMBER: 2018-0050-PWS-E; IDENTIFIER: RN106171119; LOCATION: Hallettsville, Lavaca County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)), and §290.122(c)(2)(A) and (f), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on April 27, 2016, May 5, 2016, July 5, 2016, and December 20, 2016, at least one raw groundwater source *Escherichia coli* (*E. coli*) (or other approved fecal indicator) sample from each groundwater source in use at the time the distribution coliform-positive samples were collected, and failing to issue public notification and submit a copy of the notification to the executive director (ED) regarding the failure to collect a raw groundwater source *E. coli* sample during the months of April 2016, May 2016, and July 2016; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to conduct routine coliform monitoring during the month of January 2016; PENALTY: \$741; ENFORCEMENT COORDINATOR: Ross

Luedtke, (512) 239-3157; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: Harden Cabinets LLC; DOCKET NUMBER: 2018-0054-AIR-E; IDENTIFIER: RN106017643; LOCATION: Sanger, Denton County; TYPE OF FACILITY: sawmill and cabinet shop; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air emissions; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance odor conditions; PENALTY: \$2,725; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Harris County Fresh Water Supply District 1-B; DOCKET NUMBER: 2018-0018-PWS-E; IDENTIFIER: RN102944147; LOCATION: Highlands, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2016 - December 31, 2016, and January 1, 2017 - December 31, 2017, monitoring periods, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2016 - December 31, 2016, monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar years 2015 and 2016; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter for the first quarter of 2014, and the first and third quarters of 2015; PENALTY: \$742; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: IBG ENTERPRISES, LLC; DOCKET NUMBER: 2018-0121-PWS-E; IDENTIFIER: RN101653723; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2015 - December 31, 2017, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2014 - December 31, 2014, monitoring period; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the ED each quarter by the tenth day of the month following the end of the quarter for the third quarter of 2017; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR for the third quarter of 2014 through the first quarter of 2015, and for the third quarter of 2015 through the first quarter of 2016; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and any associated late

fees for TCEQ Financial Administration Account Number 90150186 for fiscal year 2017; PENALTY: \$949; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: James McIntire dba Holiday Trav-L-Park; DOCKET NUMBER: 2018-0030-PWS-E; IDENTIFIER: RN101197895; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed for the January 1, 2017 - June 30, 2017, monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of each notification to the ED regarding the failure to conduct repeat coliform monitoring following a total coliform-positive result for the month of August 2015, regarding the failure to conduct increased coliform monitoring for the month of September 2015, regarding the failure to provide the results of Stage 2 Disinfection Byproducts sampling to the ED for the January 1, 2014 - December 31, 2014, and January 1, 2015 - December 31, 2015, monitoring periods, regarding the failure to provide the results of nitrate sampling to the ED for the January 1, 2014 - December 31, 2014, monitoring period, regarding the failure to provide the results of cyanide sampling to the ED for the January 1, 2012 - December 31, 2014, monitoring period, and regarding the failure to provide the results of metals sampling to the ED for the January 1, 2012 - December 31, 2014, monitoring period; PENALTY: \$708; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(14) COMPANY: JRM Water L.L.C.; DOCKET NUMBER: 2018-0191-PWS-E; IDENTIFIER: RN102683562; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2), (3)(A)(i)(III), (iii) and (vi), (B)(iii) and (D)(i), by failing to maintain and provide facility records to commission personnel upon request; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligram per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(q)(6)(F), by failing to provide a copy of the Boil Water Notice Rescinded notice and a copy of the associated microbiological laboratory analysis results to the executive director (ED) within ten days after the public water system has issued the rescind notice to customers; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the ED each quarter by the tenth day of the month following the end of the quarter for the second and third quarters of 2017; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2015 - December 31, 2017, monitoring period; and 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on February 23, 2017, and March 29, 2017, at least one raw groundwater source *Escherichia coli* (or other

approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; PENALTY: \$1,298; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: JSW Steel (USA) Incorporated; DOCKET NUMBER: 2018-0254-AIR-E; IDENTIFIER: RN100217421; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: steel finishing plant; RULES VIOLATED: 30 TAC §§116.115(c), 117.345(d), and 122.143(4), Federal Operating Permit (FOP) Number O1832, Special Terms and Conditions Number 7, New Source Review Permit Number 77214, Special Conditions Number 21, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit semiannual reports for units required to install a continuous emissions monitoring system; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O1832, General Terms and Conditions, and THSC, §382.085(b), by failing to submit deviation reports no later than 30 days after the end of each reporting period; PENALTY: \$17,850; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2018-0185-AIR-E; IDENTIFIER: RN102523107; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§111.111(a)(4)(A), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Number 9395, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1421, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 24, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(D) and §122.143(4), FOP Number O1421, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to include the common name of all process units or areas of the facilities that experienced the emissions event in the record; PENALTY: \$3,038; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: MULTI-COUNTY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0220-PWS-E; IDENTIFIER: RN101428746; LOCATION: Hamilton, Coryell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$426; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Nanak Groceries Incorporated dba Kuntry Komer; DOCKET NUMBER: 2017-1343-PST-E; IDENTIFIER: RN102270287; LOCATION: Campbellton, Atascosa County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$7,742; ENFORCEMENT COORDINATOR: James

Baldwin, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: NEPAL SALES MART LLC dba Fresh Food Store; DOCKET NUMBER: 2017-1575-PST-E; IDENTIFIER: RN102092624; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$16,354; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Payan's Fuel Center, Incorporated dba Payan's Tourist Service; DOCKET NUMBER: 2018-0280-AIR-E; IDENTIFIER: RN102865052; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: gas station; RULES VIOLATED: 30 TAC §114.100(a) and Texas Health and Safety Code, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline during the control period of October 1, 2017 - March 31, 2018; PENALTY: \$900; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(21) COMPANY: Professional Transport and Installation, Incorporated; DOCKET NUMBER: 2018-0288-WQ-E; IDENTIFIER: RN110031135; LOCATION: Granbury, Hood County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Sanjaykumar Patel dba Quick Pick; DOCKET NUMBER: 2017-1229-PST-E; IDENTIFIER: RN101433597; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$6,975; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: SNOW WATER VENTURES INCORPORATED dba Scooters Triple C Convenience Store; DOCKET NUMBER: 2018-0045-PST-E; IDENTIFIER: RN101773729; LOCATION: Royse City, Rockwall County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,998; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Steinhagen Oil Company, Incorporated dba Fastlane No 14; DOCKET NUMBER: 2018-0313-PST-E; IDENTIFIER:

RN101908952; LOCATION: Vidor, Orange County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate suspected releases of regulated substances within 30 days of discovery; PENALTY: \$14,438; ENFORCEMENT COORDINATOR: Berenice Munoz, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: SUNNY'S LONG POINT, INCORPORATED dba Sunny Citgo; DOCKET NUMBER: 2018-0115-PST-E; IDENTIFIER: RN101819936; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(2), by failing to assure that all UST record keeping requirements are met; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: THE CONSOLIDATED WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0157-PWS-E; IDENTIFIER: RN102687381; LOCATION: Latexo, Houston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum chloramine residual of 0.5 milligrams per liter (measured as total chlorine) throughout the distribution system at all times; 30 TAC §290.46(z), by failing to create a nitrification action plan for a system distributing chloraminated water; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; 30 TAC §290.44(d)(4), by failing to have one meter per residential, commercial, or industrial service connection; 30 TAC §290.44(h)(1)(A), by failing to have additional protection at the meter in the form of an air gap or backflow prevention assembly at any residence or establishment where an actual or potential contamination hazard exists; and 30 TAC §290.118(b), by failing to comply with the

maximum secondary constituent level for pH of greater than 7.0 standard units; PENALTY: \$1,975; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201802233
 Charmaine Backens
 Director, Litigation Division
 Texas Commission on Environmental Quality
 Filed: May 21, 2018

◆ ◆ ◆
 Amended Combined Notice of Public Meeting (to Correct the Address of the Public Meeting Location) and Notice of Application and Preliminary Decision for Air Quality Permits Proposed Air Quality Permit Numbers 144729, PSDTX1514, and GHGPSDTX165

APPLICATION AND PRELIMINARY DECISION. US CEMENT LLC, 8316 East Freeway, Houston, Texas 77029-1612, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of proposed State Air Quality Permit 144729, issuance of Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1514, and issuance of Greenhouse Gas (GHG) PSD Air Quality Permit GHGPS-DTX165 for emissions of GHGs, which would authorize construction of the Brady Cement Plant located at 6.5 miles north on US 377 from the intersection of 100 West Main Street and US 377, Brady, McCulloch County, Texas 76825. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. The proposed facility will emit the following air contaminants in a significant amount: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide, and greenhouse gases. In addition, the facility will emit the following air contaminants: ammonia and hazardous air pollutants.

The degree of PSD increment predicted to be consumed by the proposed facility and other increment-consuming sources in the area is as follows:

PM₁₀

Maximum Averaging Time	Maximum Increment Consumed (µg/m ³)	Allowable Increment (µg/m ³)
24-hour	24	30
Annual	4	17

PM_{2.5}

Maximum Averaging Time	Maximum Increment Consumed (µg/m ³)	Allowable Increment (µg/m ³)
24-hour	5	9
Annual	1	4

This application was submitted to the TCEQ on January 9, 2017. The executive director has determined that the emissions of air contaminants from the proposed facility which are subject to PSD review will

not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air

contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ San Angelo regional office, and at the F.M. Richards Memorial Library, 1106 South Blackburn Street, Brady, McCulloch County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas.

INFORMATION AVAILABLE ONLINE. These documents are accessible through the Commission's Web site at www.tceq.texas.gov/goto/cid: the executive director's preliminary decision which includes the draft permit, the executive director's preliminary determination summary, air quality analysis, and, once available, the executive director's response to comments and the final decision on this application. Access the Commissioners' Integrated Database (CID) using the above link and enter the permit number for this application. The public location mentioned above, the F.M. Richards Memorial Library, provides public access to the internet. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=31.21863&lng=-99.29291&zoom=13&type=r>.

PUBLIC COMMENT/PUBLIC MEETING. The TCEQ will hold a public meeting for this application. You may submit public comments on this application or request a contested case hearing to the TCEQ Office of the Chief Clerk at the address below. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting is not a contested case hearing. The TCEQ will consider all public comments in developing a final decision on the application. The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application. However, informal comments made during the Informal Discussion Period will not be considered by the TCEQ Commissioners before reaching a decision on the permit and no formal response will be made to the informal comments. During the Formal Comment Period, members of the public may state their formal comments into the official record. A written response to all formal comments will be prepared by the Executive Director and considered by the Commissioners before they reach a decision on the permit. A copy of the response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this application and who provides a mailing address. Only relevant and material issues raised during the formal comment period can be considered if a contested case hearing is granted.

The Public Meeting is to be held:

Thursday, June 21, 2018, at 7:00 p.m.

Ed Davenport Civic Center

816 San Angelo Highway

Brady, Texas 76825

You may submit additional written public comments within 30 days of the date of newspaper publication of this notice in the manner set

forth in the AGENCY CONTACTS AND INFORMATION paragraph below. After the deadline for public comment, the executive director will consider the comments and prepare a response to all public comment. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application.

OPPORTUNITY FOR A CONTESTED CASE HEARING. You may request a contested case hearing regarding the portions of the application for State Air Quality Permit Number 144729 and for PSD Air Quality Permit Number PSDTX1514. There is no opportunity to request a contested case hearing regarding the portion of the application for GHG PSD Air Quality Permit Number GHG-PSDTX165. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A person who may be affected by emissions of air contaminants, other than GHGs, from the facility is entitled to request a hearing. A contested case hearing request must include the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" (4) a specific description of how you would be adversely affected by the application and air emissions from the facility in a way not common to the general public; (5) the location and distance of your property relative to the facility; (6) a description of how you use the property which may be impacted by the facility; and (7) a list of all disputed issues of fact that you submit during the comment period. If the request is made by a group or association, one or more members who have standing to request a hearing must be identified by name and physical address. The interests the group or association seeks to protect must also be identified. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing within 30 days following this notice to the Office of the Chief Clerk, at the address provided in the information section below.

A contested case hearing will only be granted based on disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decisions on the application. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. Issues that are not submitted in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application for the portion of the application for GHG PSD Air Quality Permit GHG-PSDTX165. If a timely contested case hearing request is not received or if all timely contested case hearing requests are withdrawn regarding State Air Quality Permit Number 144729 and for PSD Air Quality Permit Number PSDTX1514, the executive director may issue final approval of the application. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application, and will be posted electronically to the CID. If any timely hearing requests are received and not withdrawn, the executive director will not issue final approval of the State Air Quality Permit Number 144729 and for PSD Air Quality Permit Number PSDTX1514 and will forward the application and requests to the Commissioners for their consideration at a scheduled commission meeting.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from US Cement LLC at the address stated above or by calling Mr. Bruce Broberg, P.E., Gulf Business Unit Leader at (713) 244-1062.

Amended Notice Issuance Date: May 18, 2018

TRD-201802264

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 23, 2018



Amended Notice of Hearing (to Change Public View Location)
The Premcor Refining Group Inc. SOAH Docket No.
582-18-3558 TCEQ Docket No. 2018-0572-AIR Proposed
Permit Nos. 6825A, PSDTX49M1, and GHGPSDTX167

APPLICATION.

The Premcor Refining Group Inc., P.O. Box 909, Port Arthur, Texas 77641-0909, has applied to the Texas Commission on Environmental Quality (TCEQ) for modification of State Air Quality Permit 6825A, modification to Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX49M1, and issuance of Greenhouse Gas (GHG) PSD Air Quality Permit GHGPSDTX167 for emissions of GHGs, which would authorize modification of the Valero Port Arthur Refinery located at 1801 South Gulfway Drive, Port Arthur, Jefferson County, Texas 77640. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code (TAC), Chapter 101, Subchapter J. This application was submitted to the TCEQ on February 27, 2017. The existing facility will emit the following air contaminants in a significant amount: hydrogen sulfide, nitrogen oxides, organic compounds, hazardous air pollutants, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide, and greenhouse gases.

A full PSD increment analysis was not required because the predicted impacts of all pollutants subject to PSD increment review were below the significant impact level for each pollutant.

The Executive Director has determined that the emissions of air contaminants from the existing facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, Executive Director's preliminary decision, draft permit, and the Executive Director's preliminary determination summary and Executive Director's air quality analysis, are available for viewing and copying at the TCEQ

central office, the TCEQ Beaumont regional office, and at the Groves Public Library, 5600 West Washington Avenue, Groves, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.86833&lng=-93.96833&zoom=13&type=r>. For the exact location, refer to the application.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published in English and Spanish on November 19, 2017. On February 14, 2018, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - June 28, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 TAC Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comments, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. *Si desea información en español, puede llamar al (800) 687-4040.*

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800)

687-4040. General information regarding the TCEQ can be found at <http://www.tceq.texas.gov/>.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from The Premcor Refining Group Inc. at the address stated above or by calling Ms. Paula Larocca, Manager Environmental Engineering at (409) 985-1200.

Notice issued: May 22, 2018

TRD-201802259

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 23, 2018



Combined Notice of Receipt of Application and Intent to Obtain Water Quality Permit and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater and Notice of Public Meeting for Water Quality TPDES Permit New Permit No. WQ0015616001

APPLICATION AND PRELIMINARY DECISION. Montgomery County Municipal Utility District No. 111, 9 Greenway Plaza, Suite 1100, Houston, Texas 77046, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015616001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,350,000 gallons per day. TCEQ received this application on September 25, 2017.

This combined notice is being issued to revise the description of the facility location. The new location is provided in bold below.

The facility will be located approximately 0.94 miles east and 0.48 miles south of the intersection of Farm-to-Market Road 1314 and State Highway 242, in Montgomery County, Texas 77302. The treated effluent will be discharged to a man-made channel; thence to an unnamed tributary; thence to West Fork San Jacinto River in Segment No. 1004 of the San Jacinto River Basin. The unclassified receiving water use is minimal aquatic life use for man-made channel. The designated uses for Segment No. 1004 are primary contact recreation, public water supply and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.122304&lng=-95.20294&zoom=13&type=r>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the South Regional Library, 2101 Lake Robbins Drive, The Woodlands, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application.

A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, June 25, 2018, at 7:00 p.m.

Caney Creek High School

13470 FM 1485

Conroe, Texas 77306

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or

association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the meeting to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <http://www.tceq.texas.gov/about/comments.html>. If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our website at www.tceq.texas.gov. All written public comments must be received by the Office of the Chief Clerk at the noted address within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

Further information may also be obtained from Montgomery County Municipal Utility District No. 111 at the address stated above or by calling Mr. Gregg Haan, P.E., LJA Engineering, Inc., at (713) 953-5061.

Persons with disabilities who need special accommodations at the meeting should call the Office of Public Assistance at the number above or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice issued: May 17, 2018

TRD-201802261

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 23, 2018



Enforcement Orders

An agreed order was adopted regarding U.S. Department of the Interior, Docket No. 2015-0110-IWD-E on May 23, 2018, assessing \$7,600 in administrative penalties with \$1,520 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORTH TEXAS SAND FARM, INC., Docket No. 2015-0684-WQ-E on May 23, 2018, assessing \$8,750 in administrative penalties with \$1,750 deferred. Information concerning any aspect of this order may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MUHAMMAD KHAN, LLC F/K/A KHAN BROTHERS LLC DBA PAKCO 1, Docket No. 2015-0758-PST-E on May 23, 2018, assessing \$13,412 in administrative penalties with \$2,682 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Toll Dallas TX LLC, Docket No. 2016-0186-WQ-E on May 23, 2018, assessing \$2,600 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pioneer Natural Resources USA, Inc., Docket No. 2016-0312-PWS-E on May 23, 2018, assessing \$660 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of La Marque, Docket No. 2016-0402-MLM-E on May 23, 2018, assessing \$74,563 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Blue Ridge, Docket No. 2016-1063-MWD-E on May 23, 2018, assessing \$10,375 in administrative penalties with \$2,075 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Linda W. Ball, Docket No. 2016-1160-PWS-E on May 23, 2018, assessing \$948 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Thomas E. Click and Amanda M. Click, Docket No. 2016-1345-MSW-E on May 23, 2018, assessing \$169,448 in administrative penalties with \$165,848 deferred. Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SafZone Field Services, LLC dba SafZone Storage, Docket No. 2016-1366-MSW-E on May 23, 2018, assessing \$11,250 in administrative penalties with \$2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Huan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding National Oilwell Varco L.P., Docket No. 2016-1412-AIR-E on May 23, 2018, assessing \$9,000 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Shelby Orme, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Crestchem LLC, Docket No. 2016-1572-IWD-E on May 23, 2018, assessing \$33,510 in administrative penalties with \$6,702 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE SHERWIN-WILLIAMS COMPANY, Docket No. 2016-1634-AIR-E on May 23, 2018, assessing \$120,563 in administrative penalties with \$24,112 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CITGO Refining and Chemicals Company L.P., Docket No. 2016-1762-AIR-E on May 23, 2018, assessing \$65,191 in administrative penalties with \$13,038 deferred. Information concerning any aspect of this order may be obtained by contacting Joanna Hunsberger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FLO COMMUNITY WATER SUPPLY CORPORATION, Docket No. 2016-1839-PWS-E on May 23, 2018, assessing \$2,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding AL BARI INC dba AYESHA FOODS, Docket No. 2016-1880-PST-E on May 23, 2018, assessing \$8,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Round Rock, Docket No. 2016-1918-EAQ-E on May 23, 2018, assessing \$11,251 in administrative penalties with \$2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Dow Chemical Company, Docket No. 2016-1940-AIR-E on May 23, 2018, assessing \$11,438 in

administrative penalties with \$2,287 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Leonard, Docket No. 2017-0081-MWD-E on May 23, 2018, assessing \$26,400 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 82L, LLC dba Tega Kid's Superplex, Docket No. 2017-0363-PWS-E on May 23, 2018, assessing \$1,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding ALINA ENTERPRISES, INC., Docket No. 2017-0456-PST-E on May 23, 2018, assessing \$30,803 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding David Lee Brown, Docket No. 2017-0462-WQ-E on May 23, 2018, assessing \$6,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Arlington, Docket No. 2017-0602-WQ-E on May 23, 2018, assessing \$26,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LMP READYMIX, L.L.C., Docket No. 2017-0625-IWD-E on May 23, 2018, assessing \$17,037 in administrative penalties with \$3,407 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jayesh A. Patel dba One Stop, Docket No. 2017-0720-PST-E on May 23, 2018, assessing \$10,593 in administrative penalties with \$2,118 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Martin Contreras and Otilia Contreras, Docket No. 2017-0753-PST-E on May 23, 2018, assessing \$3,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lone Star NGL Fractionators LLC, Docket No. 2017-0761-AIR-E on May 23, 2018, assessing \$158,950 in administrative penalties with \$31,790 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Kosse, Docket No. 2017-0769-MWD-E on May 23, 2018, assessing \$18,562 in administrative penalties with \$3,712 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Channel Energy Center, LLC, Docket No. 2017-0793-AIR-E on May 23, 2018, assessing \$6,301 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lai Nguyen dba Heights Super Cleaners, Docket No. 2017-0864-DCL-E on May 23, 2018, assessing \$3,492 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Clovercreek Municipal Utility District, Docket No. 2017-0872-MWD-E on May 23, 2018, assessing \$21,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Huntsman Petrochemical LLC, Docket No. 2017-0994-AIR-E on May 23, 2018, assessing \$8,925 in administrative penalties with \$1,785 deferred. Information concerning any aspect of this order may be obtained by contacting Joanna Hunsberger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sun-N-Fun Association, Docket No. 2017-1048-PWS-E on May 23, 2018, assessing \$175 in administrative penalties with \$175 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding United States Department of the Navy, Docket No. 2017-1171-IWD-E on May 23, 2018, assessing \$695.94 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALCOA WORLD ALUMINA LLC, Docket No. 2017-1303-MLM-E on May 23, 2018, assessing \$22,725 in administrative penalties with \$4,545 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201802252
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 23, 2018



Enforcement Orders

An agreed order was adopted regarding Alimo Investments, Inc. dba Shop Rite, Docket No. 2016-1092-PST-E on May 22, 2018, assessing \$6,842 in administrative penalties with \$1,368 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Corriente Investments, LLC, Docket No. 2016-1405-PWS-E on May 22, 2018, assessing \$675 in administrative penalties with \$135 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding S-COW-10 Dairy, LLC, Peter Henry Schouten, and Nova Darlene Schouten, Docket No. 2016-1585-AGR-E on May 22, 2018, assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Quik-Way Retail Associates II, Ltd. dba Valero Corner Store 0151, Docket No. 2016-1680-PST-E on May 22, 2018, assessing \$3,903 in administrative penalties with \$780 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jose Cruz Abundis, Docket No. 2017-0239-WQ-E on May 22, 2018, assessing \$1,636 in administrative penalties with \$327 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding VEER GANESH INC dba Lavon Beer & Wine Food Store, Docket No. 2017-0261-PST-E on May 22, 2018, assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding A & A STAR INC dba V & D Food Store, Docket No. 2017-0370-PST-E on May 22, 2018, assessing \$6,081 in administrative penalties with \$1,216 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Stephen F. Harris and Victoria K. Harris, Docket No. 2017-0527-MSW-E on May 22, 2018, assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jana L. Marsden, Docket No. 2017-0604-MLM-E on May 22, 2018, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Sterling Construction Co., Docket No. 2017-0661-WQ-E on May 22, 2018, assessing \$4,355 in administrative penalties with \$871 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lockhart Market LLC, Docket No. 2017-0779-PST-E on May 22, 2018, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Westdale Royal Lane, LP, Docket No. 2017-0930-PST-E on May 22, 2018, assessing \$5,955 in administrative penalties with \$1,191 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GRATER ALLIANCE, INC. dba One Stop Shop, Docket No. 2017-0974-PST-E on May 22, 2018, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NEW FAIR MART INC dba FAIR MART, Docket No. 2017-0987-PST-E on May 22, 2018, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Reliable Feeders, LLC and Eltje Brand, Docket No. 2017-0993-AGR-E on May 22, 2018, assessing \$2,625 in administrative penalties with \$525 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AMAN 2003 ENTERPRISE CORPORATION dba Pic N Go, Docket No. 2017-1065-PST-E on May 22, 2018, assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Jonathan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Randeep Singh dba Kountry Kwik and Charanjit Sandhu dba Kountry Kwik, Docket No. 2017-1087-PWS-E on May 22, 2018, assessing \$172 in administrative penalties with \$34 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORTH VICTORIA UTILITIES, INC., Docket No. 2017-1208-PWS-E on May 22, 2018, assessing \$1,150 in administrative penalties with \$230 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LEIBOLD-GROTHUES RANCH, LTD., Docket No. 2017-1212-PWS-E on May 22, 2018, assessing \$2,005 in administrative penalties with \$400 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Yasin Mawani dba Dairy Way 3, Docket No. 2017-1240-PST-E on May 22, 2018, assessing \$4,000 in administrative penalties with \$800 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Vega, Docket No. 2017-1434-PWS-E on May 22, 2018, assessing \$472 in administrative penalties with \$94 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PATTERSON WATER SUPPLY, LLC, Docket No. 2017-1479-PWS-E on May 22, 2018, assessing \$50 in administrative penalties with \$10 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Dakota Utility Contractors, Inc., Docket No. 2018-0039-WR-E on May 22, 2018, assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chuck's Dozer Service, Inc., Docket No. 2018-0055-AIR-E on May 22, 2018, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Shelby Orme, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Bryce E. Gosnell, Docket No. 2018-0104-WOC-E on May 22, 2018, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Gene Driskell, Docket No. 2018-0141-WR-E on May 22, 2018, assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201802253
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 23, 2018



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 2, 2018**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 2, 2018**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Afshan & Iftikhar Enterprises, Inc. dba KWIK STOP #1; DOCKET NUMBER: 2017-1352-PST-E; TCEQ ID NUMBER: RN105636476; LOCATION: 308 East Pine Street, Frankston, Anderson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: \$8,187; STAFF ATTORNEY: Joey Washburn, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: City of Brady; DOCKET NUMBER: 2016-1417-IWD-E; TCEQ ID NUMBER: RN104191200; LOCATION: approximately 3/4 mile south of Brady Lake on Farm-to-Market Road 3022, approximately 2.5 miles west of the City of Brady, McCulloch County; TYPE OF FACILITY: surface water treatment plant with an evaporation pond; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §§305.42(a), 305.65, and 305.125(2), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$28,750; Supplemental Environmental Project offset amount of \$28,750 applied to Water Supply Connection for Hospital Fire Protection; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: HAYS CITY CORPORATION dba Highway General Store 2; DOCKET NUMBER: 2017-1702-PST-E; TCEQ ID NUMBER: RN102866175; LOCATION: 1301 West Highway 290, Dripping Springs, Hays County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; and 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release has occurred; PENALTY: \$6,750; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: Helen Herrera; DOCKET NUMBER: 2017-1258-MSW-E; TCEQ ID NUMBER: RN109846329; LOCATION: 245 West Road Runner Drive, Somerset, Atascosa County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: \$1,250; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Jennifer Ann Greene; DOCKET NUMBER: 2017-0463-MLM-E; TCEQ ID NUMBER: RN109202218; LOCATION: 718 State Highway 46 East, Boerne, Kendall County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; PENALTY: \$10,336; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Presiliano Quintana dba Quintana Auto Parts; DOCKET NUMBER: 2017-1490-MSW-E; TCEQ ID NUMBER: RN106407174; LOCATION: 13257 Mile 1 1/2 West, Mercedes, Hidalgo County; TYPE OF FACILITY: automobile repair facility; RULES VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; 40 Code of Federal Regulations §279.22(d) and 30 TAC §324.4, by failing to clean up and properly manage released used oil and other materials; 30 TAC §328.23(a), by failing to store and dispose of used oil filters in a manner that prevents discharge of oil onto soil; and TWC, §5.702 and 30 TAC §205.6, by failing to pay outstanding General Permits Storm water fees for TCEQ Financial Account Number 20041262 for Fiscal Years 2016 and 2017; PENALTY: \$1,750; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Siddhibinayak Enterprises Inc dba Taylor Food Mart; DOCKET NUMBER: 2017-0244-PST-E; TCEQ ID NUMBER: RN101549186; LOCATION: 5376 United States Highway 67, Stephenville, Erath County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(d) and 30 TAC

§334.49(c)(4)(C), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; and TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; PENALTY: \$6,855; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Tomly Corporation; DOCKET NUMBER: 2017-0857-AIR-E; TCEQ ID NUMBER: RN105818900; LOCATION: 3101 North Zaragoza Road, El Paso, El Paso County; TYPE OF FACILITY: parking lot; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.149(b), by failing to pave or uniformly cover with gravel the site with more than five parking spaces within the City of El Paso; PENALTY: \$1,312; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201802235

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 22, 2018



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 2, 2018**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 2, 2018**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or

the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Albert Anthony Jamail; DOCKET NUMBER: 2016-1452-MSW-E; TCEQ ID NUMBER: RN109247569; LOCATION: northeast intersection of North Patrick Street and West El Paso Street, Brackettville, Kinney County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$0; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: EOLA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-1732-PWS-E; TCEQ ID NUMBER: RN102673183; LOCATION: near the intersection of Farm-to-Market Road 765 and State Highway 381, Eola, Concho County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h) and (i) and TCEQ Agreed Order (AO) Docket Number 2014-0139-PWS-E, Ordering Provision Number 2.c., by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(c)(2)(A), (h) and (i) and TCEQ AO Docket Number 2014-0139-PWS-E, Ordering Provision Number 2.c., by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct repeat coliform monitoring; and TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience of Necessity Number 10244; PENALTY: \$1,500; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201802236

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 22, 2018



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of City of Terrell

SOAH Docket No. 582-18-3783

TCEQ Docket No. 2017-0299-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 21, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 1, 2018, concerning assessing administrative penalties against and requiring certain actions of the City of Terrell, for violations in Kaufman County, Texas, of: Tex. Health & Safety Code §382.085(a) and (b) and 30 Tex. Admin. Code §§101.4, 111.201, and 330.15(a) and (c).

The hearing will allow the City of Terrell, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford the City of Terrell, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **the City of Terrell** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. The City of Terrell, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and Tex. Water Code ch. 7, Tex. Health & Safety Code chs. 361 and 382, and 30 Tex. Admin. Code chs. 70, 101, 111, and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Notice issued: May 22, 2018

TRD-201802255

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 23, 2018



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Dittrich, Inc. dba The Hitching Post

SOAH Docket No. 582-18-3784

TCEQ Docket No. 2017-1265-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 21, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 26, 2018, concerning assessing administrative penalties against and requiring certain actions of Dittrich, Inc. dba The Hitching Post, for violations in Fayette County, Texas, of: 30 Tex. Admin. Code §334.72 and §334.74.

The hearing will allow Dittrich, Inc. dba The Hitching Post, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Dittrich, Inc. dba The Hitching Post, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **Dittrich, Inc. dba The Hitching Post** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Dittrich, Inc. dba The Hitching Post, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and Tex. Water Code chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Notice issued: May 22, 2018

TRD-201802256

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 23, 2018



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Ethos Pet Nutrition, Inc.

SOAH Docket No. 582-18-3785

TCEQ Docket No. 2017-0212-Air-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 21, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 12, 2017 concerning assessing administrative penalties against and requiring certain actions of Ethos Pet Nutrition, Inc., for violations in Brown County, Texas, of: Tex. Health & Safety Code §382.0518(a) and §382.085(b), 30 Tex. Admin. Code §116.110(a), and TCEQ Agreed Order Docket No. 2014-1772-AIR-E, Ordering Provisions Nos. 2.a. and 2.d.

The hearing will allow Ethos Pet Nutrition, Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Ethos Pet Nutrition, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Ethos Pet Nutrition, Inc.**

to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Ethos Pet Nutrition, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7, Tex. Health & Safety Code ch. 382, and 30 Tex. Admin. Code chs. 70 and 116; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Clayton Smith, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Notice issued: May 22, 2018

TRD-201802258

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 23, 2018



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of SKYPAK CORP dba Country Food Store

SOAH Docket No. 582-18-3786

TCEQ Docket No. 2017-0550-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 21, 2018
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 22, 2018, concerning assessing administrative penalties against and requiring certain actions of SKYPAK CORP dba Country Food Store, for violations in Jasper County, Texas, of: Tex. Water Code §26.3475(a) and (d) and 30 Tex. Admin. Code §§334.7(d)(1)(A) and (d)(3), 334.49(c)(2)(C) and (c)(4), and 334.50(b)(2)(A)(i)(III) and (b)(2)(A)(ii).

The hearing will allow SKYPAK CORP dba Country Food Store, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford SKYPAK CORP dba Country Food Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of SKYPAK CORP dba Country Food Store to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. SKYPAK CORP dba Country Food Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ian Groetsch, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Notice issued: May 22, 2018

TRD-201802260
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 23, 2018



Notice of Public Meeting for an Air Quality Permit - Permit Number: 2501A

APPLICATION. Valero Refining-Texas, L.P., 9701 Manchester St., Houston, Texas 77012-2408, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to Air Quality Permit Number 2501A, which would authorize existing emissions of hydrogen cyanide from the Fluid Catalytic Cracking Unit located at 9701 Manchester St, Houston, Harris County, Texas 77012.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below.

The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, June 4, 2018, at 7:00 p.m.

Hartman Park Community Center

9311 East Avenue P

Houston, Texas 77012

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www.tceq.texas.gov/about/comments.html>. If you need more information about the permit application or the permitting

process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at the Park Place Regional Library, 8145 Park Place, Houston, Harris County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk St Ste H, Houston, Texas. Further information may also be obtained from Valero Refining-Texas, L.P. at the address stated above or by calling Mr. Matthew Lindquist, Manager Environmental Engineering at (713) 923-3378.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice issued: May 21, 2018

TRD-201802262

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 23, 2018



Notice of Water Rights Application

Notice issued May 17, 2018

APPLICATION NO. 13199; City of Dalworthington Gardens, 2600 Roosevelt Drive, Dalworthington Gardens, TX 76106, Applicant, has applied for a Water Use Permit maintain an existing reservoir on an unnamed tributary of Rush Creek, Trinity River Basin for recreational purposes in Tarrant County. The application does not request a new appropriation of water. The application and partial fees were received on June 4, 2015. Additional information and fees were received on November 28, 2016 and January 09, 2017. The application was declared administratively complete and filed with the Office of the Chief Clerk on January 12, 2017. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to maintaining the reservoir full with groundwater and providing a means to pass all inflows of state water downstream. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address,

daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. *Si desea información en Español, puede llamar al (800) 687-4040.*

Notice issued: May 22, 2018

TRD-201802254

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 23, 2018



Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Julia Shinn at (512) 463-5797.

Deadline: Semiannual Report due January 16, 2018, for Candidates and Officeholders

Michael G. Hendrix Jr., 2024 New York Ave., Austin, Texas 78702

Phyllis J. Wolper, 1012 Bull Run, Denton, Texas 76209

Gilberto Velasquez Jr., 1512 Vermont, Houston, Texas 77006-1042

Deadline: Unexpended Contributions Report due January 16, 2018, for Candidates and Officeholders

Morris L. Overstreet, P.O. Box 35, Prairie View, Texas 77446-0035

Deadline: 30 Day Pre-Election Report due February 5, 2018, for Candidates and Officeholders

Danny Diaz, 942 Goodwin Acres Rd., Palmview, Texas 78574

Deadline: Personal Financial Statement Report due February 12, 2018

Derek C. Adams, 14614 Golden Cypress Lane, Cypress, Texas 77429

Michael Kelly, 6419 Briarstone Lane, Houston, Texas 77379

Gilberto Velasquez Jr., 1512 Vermont, Houston, Texas 77006-1042

TRD-201802184

Seana Willing
Executive Director
Texas Ethics Commission
Filed: May 17, 2018

◆ ◆ ◆

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Home and Community-Based Services - Adult Mental Health Program

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 13, 2018, at 3:00 p.m., to receive comment on proposed payment rates for the Home and Community-Based Services - Adult Mental Health (HCBS-AMH) Program.

The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building located at 4900 N. Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. HHSC will also broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. Payment rates for HCBS-AMH enhanced supervision services to be effective July 11, 2018.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code §355.9070, which addresses the reimbursement methodology for the HCBS-AMH Program.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on

or after June 1, 2018. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2316.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 424-6637 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201802242
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: May 22, 2018

◆ ◆ ◆

Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of April, 2018, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Throughout TX	Weatherproofing Technologies Inc.	L06931	Cypress	00	04/03/18
Throughout TX	U. S. Well Services L.L.C.	L06930	Houston	00	04/03/18

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	Seton Family of Hospitals	L00268	Austin	165	04/09/18
Austin	Austin Radiological Association	L00545	Austin	210	04/12/18
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	153	04/11/18
Austin	ARA St. David's Imaging L.P.	L05862	Austin	86	04/12/18
Baytown	Exxon Mobil Corporation dba Exxonmobil Refining and Supply Company	L01134	Baytown	75	04/02/18
Baytown	Exxon Mobil Corporation dba Exxonmobil Chemical Company	L01135	Baytown	85	04/02/18
Beaumont	Exxonmobil Corporation dba Exxonmobil Chemical Co. Beaumont Polyethylene Plant	L02316	Beaumont	49	04/12/18
Dallas	Truradiation Partners North Dallas L.L.C. dba Northpoint Cancer Center	L06645	Dallas	07	04/12/18
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	101	04/13/18
Fort Worth	Tarrant County Hospital District dba JPS Health Network	L02208	Fort Worth	87	04/11/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Fort Worth	Weaver Consultants Group L.L.C.	L06395	Fort Worth	08	03/20/18
Houston	Greater Houston Heart Specialists P.A.	L05666	Houston	13	04/04/18
Houston	Methodist Health Centers dba Houston Methodist West Hospital	L06806	Houston	02	04/12/18
McKinney	Baylor Medical Centers at Garland and McKinney dba Baylor Scott & White Medical Center – McKinney	L06470	McKinney	11	04/02/18
N Richland Hills	Heartplace P.A.	L05548	N. Richland Hills	27	04/11/18
Plano	Columbia Medical Center of Plano Subsidiary L.P. dba Medical Center of Plano	L02032	Plano	115	04/03/18
Sugar Land	Methodist Health Centers dba Houston Methodist Sugar Land Hospital	L05788	Sugar Land	47	04/12/18
Texas City	Ineos Styrolution America L.L.C.	L00354	Texas City	45	04/13/18
Texas City	Blanchard Refining Company L.L.C.	L06526	Texas City	15	04/02/18
Throughout TX	Fargo Consultants Inc.	L05300	Dallas	18	04/04/18
Throughout TX	Mistras Group Inc.	L06369	Deer Park	26	04/10/18
Throughout TX	D&S Engineering Labs L.L.C.	L06677	Denton	12	04/04/18
Throughout TX	National Inspection Services L.L.C.	L05930	Fort Worth	42	04/02/18
Throughout TX	Gammatron Inc.	L02148	Friendswood	26	04/11/18
Throughout TX	Oceaneering International Inc.	L04463	Houston	91	04/12/18
Throughout TX	French Engineering L.L.C.	L06329	Houston	03	04/03/18
Throughout TX	Evergreen Environmental Services L.L.C.	L06820	La Porte	01	04/10/18
Throughout TX	Tetra Tech Inc.	L06868	Midland	01	04/13/18
Throughout TX	Shared Medical Services Inc.	L06142	Nacogdoches	25	04/02/18
Throughout TX	Raba-Kistner Consultants Inc.	L01571	San Antonio	87	04/02/18
Throughout TX	Laurie McGowen & Gayle Staton dba Lamco & Associate	L05152	The Woodlands	16	04/05/18
Tomball	NRG Manufacturing Inc.	L06550	Tomball	02	04/10/18
Victoria	Hardin Tubular Sales Inc.	L05224	Victoria	05	04/12/18

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Greenville	Hunt Memorial Hospital District	L01695	Greenville	54	04/03/18

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
L06672	Nabil M. Attaya M.D., P.A.	L06672	Lubbock	01	04/09/18

TRD-201802237
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: May 22, 2018

◆ ◆ ◆
 Licensing Actions for Radioactive Materials

During the second half of April, 2018, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.state.tx.us.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Throughout TX	IIA Field Services L.L.C.	L06933	Abilene	00	04/26/18

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	Seton Family of Hospitals	L00268	Austin	166	04/26/18
Austin	Austin Radiological Association	L00545	Austin	211	04/23/18
Austin	ARA St. David's Imaging L.P.	L05862	Austin	87	04/23/18
Bay City	Matagorda County Hospital District dba Matagorda Regional Medical Center	L02701	Bay City	22	04/18/18
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	154	04/27/18
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	102	04/23/18
Beaumont	Texas Oncology P.A. dba Mamie McFaddin Ward Cancer Center	L06919	Beaumont	01	04/16/18
Bedford	Texas Health Harris Methodist Hospital Hurst Euleess Bedford	L02303	Bedford	42	04/25/18
Borger	Chevron Phillips Chemical Company L.P.	L05181	Borger	27	04/20/18
Brownwood	Brownwood Hospital L.P. dba Brownwood Regional Medical Center	L02322	Brownwood	65	04/18/18
Conroe	CHCA Conroe L.P. dba Conroe Regional Medical Center	L01769	Conroe	104	04/25/18
Dallas	Cardinal Health	L05610	Dallas	43	04/23/18
Denton	Texas Health Presbyterian Hospital Denton	L04003	Denton	54	04/25/18
Denton	Denton Cancer Center L.L.P.	L05945	Denton	13	04/24/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Edinburg	McAllen Hospitals L.P. dba Edinburg Regional Medical Center	L04262	Edinburg	25	04/17/18
El Paso	El Paso County Hospital District dba University Medical Center of El Paso	L00502	El Paso	77	04/20/18
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Memorial Campus	L02353	El Paso	136	04/20/18
Fredericksburg	Hill Country Memorial Hospital	L03516	Fredericksburg	37	04/17/18
Houston	Houston Community College System	L03099	Houston	23	04/18/18
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	132	04/24/18
Houston	Cardinal Health	L05536	Houston	60	04/23/18
Houston	PETNET Houston L.L.C.	L05542	Houston	35	04/16/18
Houston	Houston Cyclotron Partners L.P. dba Cyclotope	L05585	Houston	30	04/19/18
Houston	Enviroklean Product Development Inc.	L06350	Houston	09	04/26/18
Houston	Oxy USA Inc.	L06889	Houston	01	04/25/18
Humble	Cardiovascular Association P.L.L.C.	L05421	Humble	26	04/23/18
Kingwood	Lieber-Moore Cardiology Associates dba Texas Cardiology Associates of Houston	L04622	Kingwood	17	04/18/18
Laredo	Laredo Regional Medical Center L.P. dba Doctors Hospital of Laredo	L02192	Laredo	43	04/17/18
Longview	Texas Oncology P.A. dba Longview Cancer Center	L05017	Longview	20	04/24/18
Lubbock	Covenant Medical Group dba Covenant Cardiology Associates	L04468	Lubbock	32	04/25/18
Lubbock	Meta Isotope Technology L.L.C.	L06827	Lubbock	04	04/25/18
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	115	04/27/18
Plano	Texas Health Resources	L06480	Plano	16	04/17/18
Plano	Orano Med L.L.C.	L06781	Plano	09	04/27/18
Roanoke	Duininck Inc.	L03957	Roanoke	23	04/23/18
San Antonio	PETNET Solutions Inc.	L05569	San Antonio	33	04/16/18
Sugar Land	Texas Oncology P.A. dba Texas Oncology Cancer Center Sugarland	L05816	Sugar Land	18	04/23/18
Sweeny	Chevron Phillips Chemical Company L.P.	L06771	Sweeny	01	04/16/18
Throughout TX	Dyess-Peterson Testing Laboratory Inc.	L01123	Amarillo	53	04/24/18
Throughout TX	ECS Southwest L.L.P.	L05384	Carrollton	16	04/20/18
Throughout TX	Varco L.P.	L00287	Houston	149	04/17/18
Throughout TX	Baker Hughes Oilfield Operations L.L.C.	L00446	Houston	192	04/26/18
Throughout TX	Tolunay Wong Engineers Inc.	L04848	Houston	23	04/23/18
Throughout TX	Texas Gamma Ray L.L.C. dba TGR Industrial Services	L05561	Houston	116	04/27/18
Throughout TX	C&J Spec Rent Services Inc. dba Casedhole Solutions	L06662	Houston	08	04/20/18
Throughout TX	C & J Spec-Rent Services Inc.	L06712	Houston	06	04/20/18
Throughout TX	Houston	L06765	Houston	11	04/27/18
Throughout TX	Cardno USA Inc.	L06796	Houston	03	04/20/18
Throughout TX	Houston NDT Services L.L.C. dba Houston Inspection Services	L06920	Houston	01	04/24/18
Throughout TX	Weld Spec Inc.	L05426	Lumberton	111	04/17/18
Throughout TX	Magnum Midstream L.P.	L06885	Pecos	02	04/23/18
Throughout TX	Shared Imaging L.L.C.	L06614	Richmond	12	04/24/18
Throughout TX	Raba-Kistner Consultants Inc. dba Raba-Kistner-Brytest Consultants Inc.	L01571	San Antonio	88	04/19/18
Throughout TX	Professional Service Industries Inc.	L04946	San Antonio	16	04/25/18
Throughout TX	Arias & Associates Inc. dba Arias Geoprosessionals	L04964	San Antonio	51	04/26/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	French Engineering L.L.C.	L06329	Spring	04	04/26/18
Throughout TX	Scott & White Memorial Hospital dba Scott & White Medical Center – Temple	L00331	Temple	108	04/20/18
Throughout TX	Scott & White Memorial Hospital dba Scott & White Medical Center – Temple	L00331	Temple	109	04/24/18
Throughout TX	Braun Intertec Corporation	L06681	Tyler	09	04/23/18
Tomball	North Houston – TRMC L.L.C. dba Tomball Regional Medical Center	L06894	Tomball	01	04/23/18
Waco	Hillcrest Baptist Medical Center dba Baylor Scott & White Medical Center Hillcrest	L00845	Waco	120	04/19/18

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Throughout TX	Southwestern Testing Laboratories L.L.C. dba STL Engineers	L06100	Dallas	13	04/17/18

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Dallas	Building Materials Corporation of America dba GAF Materials Corporation	L03811	Dallas	21	04/17/18
Floresville	McBride Wireline Services L.L.C.	L06400	Floresville	02	04/27/18
Port Arthur	ARPA Advanced Radiation Physics Associates L.P. dba Cancer Center of Southeast Texas	L06275	Port Arthur	06	04/27/18
Throughout TX	FTS International L.L.C.	L06706	Fort Worth	03	04/23/18
Throughout TX	Fugro USA Land Inc.	L04322	Houston	115	04/23/18

TRD-201802238
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: May 22, 2018

Norma Garcia
General Counsel
Texas Department of Insurance
Filed: May 23, 2018

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas by STONEGATE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Niles, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201802251

Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation published proposed amendments to Chapter 127, Designated Doctor Procedure and Requirements, §§127.1, 127.5, 127.10, 127.100, 127.110, 127.130, 127.140, and 127.220, in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3210). Due to publication errors made by the *Texas Register*, several paragraphs were omitted from the preamble. The preamble should be corrected as follows.

On page 3213, after the paragraph reading Amended §127.5(i)(2), the preamble should read as follows:

Amended §127.5(i)(3) adds the phrase "how contact was made to reschedule, indicate the telephone number, facsimile number, or email address used to make contact;" the amendment is necessary to ensure the method and contact information is correct. An injured employee may change their phone number or email address and it is important that the division is able to verify the information if a scheduling issue or complaint arises.

On page 3216, after the paragraph reading Amended §127.130(b)(5), the preamble should read as follows:

Amended §127.130(b)(7) adds the sentence "To examine injuries and diagnoses relating to mental and behavioral disorders, a designated doctor must be a licensed medical doctor or doctor of osteopathy." The non-substantive amendment is necessary to reassign "mental and behavioral disorders" to a new paragraph for division data collection purposes.

Amended §127.130(b)(8) re-numbers the paragraphs, specifically existing paragraphs (7), (8), to paragraphs (8), (9), respectively. The non-substantive amendment is necessary to account for added text. Amended §127.130(b)(8) adds the phrases "cuts to skin involving underlying structures" and "non-musculoskeletal structures of the torso;" these amendments are necessary to clarify that certain areas of the torso and any cuts to the skin involving underlying structures, i.e., nerves, blood vessels, or tendons, are injuries that a licensed medical doctor or doctor of osteopathy are qualified to examine. Licensed medical doctors and doctors of osteopathy possess the educational experience and training necessary to evaluate the impact of these injuries. The division notes that other injuries involving underlying structures of the skin such as, rotator cuff tears, anterior cruciate ligament (ACL) tears, carpal tunnel syndrome, or injuries involving compression or inflammation of nerves, tendons or ligaments, are not cuts and are appropriately suited for evaluation by licensed medical doctors, doctors of osteopathy, or doctors of chiropractic. Amended §127.130(b)(8) adds the words "hernia;" "respiratory;" "endocrine;" "hematopoietic;" and "urologic" to clarify the body areas that a licensed medical doctor or doctor of osteopathy are qualified to examine. Amended §127.130(b)(8) deletes the phrase "mental and behavioral disorders;" and the words "tendon lacerations; and dislocations." The amendments are necessary to reassign mental and behavioral disorders into an independent paragraph for division data collection purposes and relocate dislocations to a board certification category because dislocations are complex injuries less frequently seen in the workers' compensation system and board certified medical doctors and doctors of osteopathy possess the educational experience and training necessary to evaluate the severity of these injuries. The amendment is also necessary because tendon lacerations are examples of cuts to an underlying structure of the skin and no longer necessary to describe separately.

Amended §127.130(b)(9) adds the number "(8)" and deletes the number "(7)" after the word "paragraphs" to correct the referenced paragraphs in the subsection.

On page 3216, after the paragraph reading Amended §127.130(b)(9)(E), the preamble should read as follows:

Amended §127.130(b)(9)(G) adds the word "burns" and deletes the phrase "exposure limited to skin exposure" to conform to current medical terminology.

TRD-201802231



Texas Lottery Commission

Scratch Ticket Game Number 2077 "Millionaire Club"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2077 is "MILLIONAIRE CLUB". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2077 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2077.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: WISHBONE SYMBOL, LEAF SYMBOL, ROSE SYMBOL, KEY SYMBOL, FISH SYMBOL, DRUM SYMBOL, PLUM SYMBOL, MAGNIFYING GLASS SYMBOL, LEMONADE SYMBOL, DIAMOND SYMBOL, VAULT SYMBOL, RAINBOW SYMBOL, CHIPS SYMBOL, RING SYMBOL, HORSESHOE SYMBOL, STAR SYMBOL, POT OF GOLD SYMBOL, CROWN SYMBOL, BANKROLL SYMBOL, MONEYBAG SYMBOL, GOLD BAR SYMBOL, HAT SYMBOL, BELL SYMBOL, CHERRY SYMBOL, COIN SYMBOL, GRAPE SYMBOL, LEMON SYMBOL, MELON SYMBOL, PEPPERS SYMBOL, APPLE SYMBOL, POP SYMBOL, BANANA SYMBOL, BOOT SYMBOL, CACTUS SYMBOL, CLOVER SYMBOL, MUSIC SYMBOL, HEART SYMBOL, STRAWBERRY SYMBOL, \$10.00, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$150, \$250, \$500, \$1,000, \$10,000, \$1,000,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2077 - 1.2D

PLAY SYMBOL	CAPTION
WISHBONE SYMBOL	WBN
LEAF SYMBOL	LEAF
ROSE SYMBOL	ROSE
KEY SYMBOL	KEY
FISH SYMBOL	FISH
DRUM SYMBOL	DRUM
PLUM SYMBOL	PLUM
MAGNIFYING GLASS SYMBOL	MGNFY
LEMONADE SYMBOL	LMNAD
DIAMOND SYMBOL	DIMND
VAULT SYMBOL	VAULT
RAINBOW SYMBOL	RBOW
CHIPS SYMBOL	CHIPS
RING SYMBOL	RING
HORSESHOE SYMBOL	HSHOE
STAR SYMBOL	STAR
POT OF GOLD SYMBOL	PTGLD
CROWN SYMBOL	CROWN
BANKROLL SYMBOL	WIN
MONEYBAG SYMBOL	WIN
GOLD BAR SYMBOL	WINX5
HAT SYMBOL	HAT
BELL SYMBOL	BELL
CHERRY SYMBOL	CHRY
COIN SYMBOL	COIN
GRAPE SYMBOL	GRPE
LEMON SYMBOL	LEMN
MELON SYMBOL	MELN
PEPPERS SYMBOL	PPRS
APPLE SYMBOL	APPLE
POP SYMBOL	POP
BANANA SYMBOL	BANANA
BOOT SYMBOL	BOOT
CACTUS SYMBOL	CACTUS
CLOVER SYMBOL	CLO

MUSIC SYMBOL	MUSIC
HEART SYMBOL	HEART
STRAWBERRY SYMBOL	STBRY
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$150	ONFF
\$250	TOFF
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$1,000,000	TPPZ
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO

23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the

ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2077), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2077-0000001-001.

K. Pack - A Pack of the "MILLIONAIRE CLUB" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MILLIONAIRE CLUB" Scratch Ticket Game No. 2077.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MILLIONAIRE CLUB" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 192 (one hundred ninety-two) Play Symbols. FAST \$50: If a player reveals two matching symbols, the player wins \$50 instantly! FAST \$100: If a player reveals two matching symbols, the player wins \$100 instantly! FAST \$250: If a player reveals two matching symbols, the player wins \$250 instantly! FAST \$500: If a player reveals two matching symbols, the player wins \$500 instantly! GAME 1: If a player reveals a BANKROLL SYMBOL in any BONUS box, the player wins the prize for that symbol. If a player reveals a GOLD BAR SYMBOL in any BONUS box, the player wins 5 TIMES the prize for that symbol. GAME 2 AND 4: If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a MONEYBAG SYMBOL, the player wins the PRIZE for that symbol instantly. If the player reveals a GOLD BAR SYMBOL, the player wins 5 TIMES the PRIZE for that symbol. GAME 3: SLOTS: If a player reveals 3 matching symbols in the same ROW, the player wins the PRIZE for that ROW. If a player reveals a GOLD BAR SYMBOL in any ROW, the player wins 5 TIMES the PRIZE for that ROW.

No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 192 (one hundred ninety-two) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 192 (one hundred ninety-two) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 192 (one hundred ninety-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 192 (one hundred ninety-two) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.
- B. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.
- C. FAST CASH SPOTS: The Play Symbols in non-winning FAST CASH spots will not match Play Symbols in a winning FAST CASH spot.
- D. FAST CASH SPOTS: No matching FAST CASH Play Symbols on Non-Winning Tickets.
- E. GAME 1- FIND: No matching non-winning Play Symbols on a Ticket.
- F. GAME 1- FIND: The "BANKROLL" (WIN) Play Symbol will only appear on winning Tickets.
- G. GAME 1- FIND: The "GOLD BAR" (WINX5) Play Symbol will only appear on winning Tickets, as dictated by the prize structure.
- H. GAME 2 AND GAME 4- KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).
- I. GAME 2 AND GAME 4- KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.
- J. GAME 2 AND GAME 4- KEY NUMBER MATCH: Within a specific GAME, a non-winning Prize Symbol will never match a winning Prize Symbol.
- K. GAME 2 AND GAME 4- KEY NUMBER MATCH: A GAME may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.
- L. GAME 2 AND GAME 4- KEY NUMBER MATCH: The "MONEYBAG" (WIN) Play Symbol may appear multiple times on intended winning Tickets, unless restricted by other parameters, play action or prize structure.
- M. The "GOLD BAR" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.
- N. GAME 3- SLOTS: There will be no occurrence of three (3) matching Play Symbols in any adjacent vertical or diagonal row.
- O. GAME 3- SLOTS: A GAME may have up to four (4) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.
- P. GAME 3- SLOTS: A GAME may have up to six (6) matching non-winning Play Symbols, unless restricted by other parameters, play action or prize structure.
- Q. GAME 3- SLOTS: There will be no matching non-winning ROWS in any order.
- R. GAME 3- SLOTS: The "GOLD BAR" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.
- S. GAME 3- SLOTS: Vertically adjacent winning ROWS will not have matching winning Play Symbols.
- T. GAME 3- SLOTS: A winning ROW using the "GOLD BAR" (WINX5) Play Symbol will include a pair of matching Play Symbols in the same ROW.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLIONAIRE CLUB" Scratch Ticket Game prize of \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$150, \$250 or \$500, a claimant

shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$75.00, \$100, \$150, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLIONAIRE CLUB" Scratch Ticket Game prize of \$1,000, \$10,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MILLIONAIRE CLUB" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:
 - a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
 - b. in default on a loan made under Chapter 52, Education Code; or
 - c. in default on a loan guaranteed under Chapter 57, Education Code; and
2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MILLIONAIRE CLUB" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MILLIONAIRE CLUB" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A

Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 5,040,000 Scratch Tickets in Scratch Ticket Game No. 2077. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2077 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	403,200	12.50
\$25	403,200	12.50
\$50	403,200	12.50
\$75	101,556	49.63
\$100	109,200	46.15
\$150	39,900	126.32
\$250	20,160	250.00
\$500	5,250	960.00
\$1,000	30	168,000.00
\$10,000	15	336,000.00
\$1,000,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.39. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2077 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2077, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201802247
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 22, 2018

◆ ◆ ◆

North Central Texas Council of Governments

Notice of Contract Award - DART Red and Blue Line Corridors Transit Oriented Development Parking Management Study

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request appeared in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7792). The selected entity will perform technical and professional work for the DART Red and Blue Line Corridors Transit Oriented Development (TOD) Parking Management Study.

The entity selected for this project is Nelson\Nygaard Consulting Associates, Inc. 411 W Chapel Hill Street, Suite 200, Durham NC 27701. The amount of the contract is not to exceed \$275,000.

TRD-201802240
 R. Michael Eastland
 Executive Director
 North Central Texas Council of Governments
 Filed: May 22, 2018

◆ ◆ ◆

Request for Partners to Apply for the Advanced Transportation and Congestion Management Technologies Deployment Initiative

The North Central Texas Council of Governments (NCTCOG) is seeking private-sector and research partners for a proposal to the United States Department of Transportation (USDOT) Advanced Transportation and Congestion Management Technologies Deployment (ATCMTD) Initiative. NCTCOG plans to submit an application that develops the Next Generation Platform for Regional Multimodal Transportation Management through information integration and technology deployment. This information hub and technology deployment will allow for the collection of information from existing and new sources to integrate system operations, balance demand between modes, and provide interoperability with future technologies. Regional partners embrace the opportunity to connect and share information, throughout the North Central Texas region, to provide seamless transportation systems to the users.

The focus of this Request for Partners (RFP) is to reach out to the private sector and research agencies to identify available information and/or technology deployment to increase safety, reduce congestion, and improve overall operations of a regional multimodal, multi-operator transportation system. Partner's letter of interest must be received no later than 5:00 p.m., on Thursday June 14, 2018, to Natalie Bettger, Senior Program Manager, at TransRFPs@nctcog.org. Copies of the Request for Partners will be available at www.nctcog.org/rfp by the close of business on Friday, June 1, 2018.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201802241

R. Michael Eastland
Executive Director

North Central Texas Council of Governments

Filed: May 22, 2018

Panhandle Regional Planning Commission

RFP-Posting for Public Information Campaign

LEGAL NOTICE

PANHANDLE REGIONAL ORGANIZATION TO MAXIMIZE PUBLIC TRANSPORTATION REQUEST FOR PROPOSAL - PUBLIC INFORMATION CAMPAIGN

The Panhandle Regional Organization to Maximize Public Transportation (PROMPT) acting through the Panhandle Regional Planning Commission (PRPC) seeks the following:

Proposals - The Panhandle Regional Organization to Maximize Public Transportation (PROMPT) requests proposals from candidates to develop and manage a public information campaign to increase ridership by promoting both the awareness and quality of the area's public transportation and to increase awareness of the area's recently developed mobile application.

I. The public information campaign will be designed to increase ridership by promoting both the awareness and quality of the area's public transportation and to increase awareness of the area's recently developed mobile application. The intent of this request for proposal (RFP) is to select the candidate with the most advantageous proposal to develop and manage a campaign that is creative and utilizes a wide range of marketing strategies to: promote the use of public transit and to establish and increase awareness of the recently developed mobile transit app.

II. Submission

a. RFP packages are available by written request from the Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, Texas 79105. Telephone (806) 372-3381, email: jhall@theprpc.org. Emailed requests will be accepted. All inquiries and requests must be directed to the attention of Jamie Hall.

b. Deadline for Submitting a Proposal - June 12, 2018, at 5:00 p.m. Please submit five (5) paper copies and one (1) electronic copy of the proposal:

Panhandle Regional Planning Commission

Attn: Jamie Hall

PO Box 9257

Amarillo, Texas 79105

Proposals received after the stated deadline will not be considered.

PROMPT reserves the right to negotiate with any and all individuals and firms that submit proposals, and to award more than one contract or to award no contracts. All potential contracts and tasks arising from this RFP are subject to approval by the PROMPT Board of Directors and PRPC.

TRD-201802232

Jamie E. Hall

Local Government Program Specialist

Panhandle Regional Planning Commission

Filed: May 21, 2018

Plateau Water Planning Group

Vacancy Notice - Public Interest - Bandera, Kerr or Real County

Please be advised that the Plateau Water Planning Group (PWPG), Region "J" is currently seeking nominations to fill one vacancy on the Regional Planning Group. This vacancy represents the "Public" interests. The PWPG and Texas Water Development Board (TWDB) believe it is important to maintain balanced geographic representation on the PWPG. Please note that the referenced vacancy is for Bandera, Kerr or Real County. However, residents of all counties are encouraged to submit applications. Geographic distribution will be taken into account during selection.

The Plateau Water Planning Group is a voluntary organization and no funds are available for reimbursement of expenses associated with service to or participation in the planning group. Successful nominees must represent the vacant interest ("Public") for which the member is sought, be willing to actively participate in the regional water planning process and abide by the PWPG By-Laws. Written nominations must be filed with the Plateau Water Planning Group at the address listed below no later than July 16, 2018.

Submit written nominations to:

Plateau Water Planning Group (PWPG)

Attention: Mr. Gene Williams

c/o: Jody Grinstead

700 Main Street, Ste. 101

Kerrville, TX 78028

Fax: (830) 792-2218

E-Mail: jgrinstead@co.kerr.tx.us

If you have any questions regarding the nomination process or requirements for nominations, please contact Jonathan Letz at (830) 792-2216.

TRD-201802217

Jonathan Letz

Chair

Plateau Water Planning Group

Filed: May 18, 2018



Vacancy Notice - Public Interest - Edwards, Val Verde or Kinney County

Please be advised that the Plateau Water Planning Group (PWPG), Region "J" is currently seeking nominations to fill one vacancy on the Regional Planning Group. This vacancy represents the "Public" interests. The PWPG and Texas Water Development Board (TWDB) believe it is important to maintain balanced geographic representation on the PWPG. Please note that the referenced vacancy is for Edwards, Kinney or Val Verde County. However, residents of all counties are encouraged to submit applications. Geographic distribution will be taken into account during selection.

The Plateau Water Planning Group is a voluntary organization and no funds are available for reimbursement of expenses associated with service to or participation in the planning group. Successful nominees must represent the vacant interest ("Public") for which the member is sought, be willing to actively participate in the regional water planning process and abide by the PWPG By-Laws. Written nominations must be filed with the Plateau Water Planning Group at the address listed below no later than July 16, 2018.

Submit written nominations to:

Plateau Water Planning Group (PWPG)

Attention: Mr. Gene Williams

c/o: Jody Grinstead

700 Main Street, Ste. 101

Kerrville, TX 78028

Fax: (830) 792-2218

E-Mail: jgrinstead@co.kerr.tx.us

If you have any questions regarding the nomination process or requirements for nominations, please contact Jonathan Letz at (830) 792-2216.

TRD-201802216

Jonathan Letz

Chair

Plateau Water Planning Group

Filed: May 18, 2018



Vacancy Notice - Val Verde County

Please be advised that the Plateau Water Planning Group (PWPG), Region "J" is currently seeking nominations to fill one vacancy on the Regional Planning Group. This vacancy represents the "Public" interests. The PWPG and Texas Water Development Board (TWDB) believe it is important to maintain balanced geographic representation on the PWPG. Please note that the referenced vacancy is currently held by Val Verde County. However, residents of all counties are encouraged to submit applications. Geographic distribution will be taken into account during selection.

The Plateau Water Planning Group is a voluntary organization and no funds are available for reimbursement of expenses associated with service to or participation in the planning group. Successful nominees must represent the vacant interest ("Public") for which the member is sought, be willing to actively participate in the regional water planning process and abide by the PWPG By-Laws. Written nominations must be filed with the Plateau Water Planning Group at the address listed below no later than July 16, 2018.

Submit written nominations to:

Plateau Water Planning Group (PWPG)

Attention: Mr. Gene Williams

c/o: Jody Grinstead

700 Main Street, Ste. 101

Kerrville, TX 78028

Fax: (830) 792-2218

E-Mail:

jgrinstead@co.kerr.tx.us

If you have any questions regarding the nomination process or requirements for nominations, please contact Jonathan Letz at (830) 792-2216.

TRD-201802215

Jonathan Letz

Chair

Plateau Water Planning Group

Filed: May 18, 2018



Public Utility Commission of Texas

Notice of Application for Approval of a Service Area Contract

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval of a service area contract designating areas to be served.

Docket Style and Number: Application of City of Elgin and Aqua Water Supply Corporation for Approval of Service Area Contract Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Bastrop County, Docket Number 48375.

The Application: City of Elgin and Aqua Water Supply Corporation filed an application under Texas Water Code §13.248 for approval of a service area contract and to amend their water certificates of convenience and necessity (CCN) in Bastrop County. Elgin holds water CCN no. 10311 and Aqua holds water CCN No. 10294. Applicants have agreed to alter the boundaries of their respective CCNs and transfer two separate affected areas comprising 140 acres and zero current customers. There are no transfer of assets and facilities between the applicants.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48375.

TRD-201802249

Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2018



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 15, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Nueces Water Supply Corporation for Sale, Transfer, or Merger of Cyndie Park Unit 1 Water Co-Op Facilities and Certificate Rights in Nueces County, Docket Number 48372.

The Application: Nueces Water Supply Corporation and Cyndie Park Unit 1 Water Co-op filed an application for the sale, transfer, or merger of facilities and certificate rights in Nueces County. If approved Cyndie Park Unit 1 Water Co-op facilities and water service area under certificate of convenience and necessity number 12107 will transfer to Nueces Water Supply Corporation. The transfer includes approximately 30.8 acres and 1 current customer.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 48372.

TRD-201802219
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 18, 2018



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 18, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Antrim Corporation Under §39.158 of the Public Utility Regulatory Act, Docket Number 48378.

The Application: On May 18, 2018, Antrim Corporation filed an application for approval of the purchase of ownership interests in Logan's Gap Holdings LLC. The combined generation owned and controlled by Antrim and its affiliates following the proposed purchase will not exceed twenty percent of the total electricity offered for sale in the Electric Reliability Council of Texas.

Persons wishing to intervene or comment on the action sought should contact the Commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48378.

TRD-201802246
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2018



Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity (CCN) in Montgomery and Liberty Counties.

Docket Style and Number: Application of C & R Water Supply, Inc. to Amend a Water Certificate of Convenience and Necessity in Montgomery and Liberty Counties, Docket Number 48357.

The Application: On May 11, 2018, C & R Water Supply, Inc. filed an application to amend its water CCN No. 13098 in Montgomery and Liberty Counties. The total service area being requested includes approximately 440 acres and 40 current customers.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48357.

TRD-201802190
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 17, 2018



Notice of Application to Amend Eligible Telecommunications Carrier and Amend Eligible Telecommunications Provider Designations

The Public Utility Commission of Texas gives notice of an application filed on May 14, 2018, to amend eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) designations under 16 Texas Administrative Code (TAC) §26.417 and §26.418, respectively.

Docket Title and Number: Application of Virgin Mobile USA, L.P. to Amend its Designation as an Eligible Telecommunications Carrier and its Designation as an Eligible Telecommunications Provider, Docket Number 48367.

The Application: Virgin Mobile USA, L.P. (Virgin Mobile) filed an application to amend its designations as an ETC and as an ETP. Virgin Mobile requested this amendment to include additional wire centers in the service territories of Southwestern Bell Telephone Company dba AT&T Texas and Frontier Southwest Incorporated dba Frontier Communications of Texas. The list of wire centers in the designated areas is attached to the application as Exhibit 3. Under 16 TAC §26.417(f)(2)(A)(i) and §26.418 (h)(2)(A)(i), the effective date is July 2, 2018.

Persons who wish to comment upon the action sought should notify the commission no later than June 21, 2018. Requests for further information should be mailed to the Public Utility Commission of Texas,

P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Customer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48367.

TRD-201802185
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 17, 2018



Notice of Petition for Recovery of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 13, 2018, for recovery of Universal Service Funding pursuant to Public Utility Regulatory Act §56.025 and 16 Texas Administrative Code §26.406.

Docket Style and Number: Application of BTBC Communications, Inc. to Recover Funds from the Texas Universal Service Fund. Docket Number 48270.

The Application: Border to Border Communications, Inc. (BTBC) seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to BTBC. The petition requests that the commission allow BTBC recovery of funds from the TUSF in the amount of \$1,252,457 to replace projected 2018 FUSF revenue reductions. BTBC is not seeking to offset the recovery of lost FUSF revenues through increases in local rates.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48270.

TRD-201802228
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: May 21, 2018



Notice of Petition for True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 17, 2018, for true-up of 2016 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Border to Border Communications, Inc. for a True-Up of 2016 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 48298.

The Application: Border to Border Communications, Inc. (BTBC) filed a true-up report in accordance with Findings of Fact 11 through 12 of the final Order in Docket No. 45944. In Docket No. 45944, it was determined that the Federal Communications Commission actions, as described in the Order, were reasonably projected to reduce the amount that BTBC received in FUSF revenue by \$859,754.00 for 2016. BTBC

recovered the entire impact of \$859,754.00 from the TUSF but stated that they did not fully recover the impacted FUSF revenues as a result of the final Order in Docket No. 45944 and is due to recover an additional \$135,145.00 from the TUSF.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48298.

TRD-201802218
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 18, 2018



Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html

Or visit www.txdot.gov, and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or (800) 68-PI-LOT.

TRD-201802183
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: May 16, 2018



Public Notice - FY 2019-2021 Disadvantaged Business Enterprise Goal for Federal Aviation Administration Projects

Pursuant to Title 49 Code of Federal Regulations, Part 26, recipients of federal-aid funds are required to establish DBE programs and set an overall goal for participation. The proposed overall FAA DBE goal for fiscal years 2019-2021 is 12.0%.

The proposed goal and related methodology are available for inspection online at www.txdot.gov/business/partnerships/dbe/goals.html or onsite between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday until July 13, 2018, at the following address: TxDOT, Civil Rights Division, 200 East Riverside Dr., Bldg. 200, Austin, Texas 78704.

TxDOT will also accept written comments on the DBE goal until July 13, 2018. Comments should be submitted via e-mail to CIV_Report@txdot.gov or mailed to TxDOT, Civil Rights Division, ATTN: Goal Methodology, 125 East 11th St., Austin, Texas 78701.

Questions concerning inspection of the DBE goal and methodology should be directed to the Civil Rights Division at (512) 416-4700.

TRD-201802182

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: May 16, 2018



Workforce Solutions Brazos Valley Board

Notice of Additional Period for Questions & Answers for Current RFQ for the Management and Operations of Childcare Services and/or Workforce Center Services and/or Business Services

An additional period is available to all potential bidders to submit questions and answers on the above referenced RFP effective today May 21, 2018.

An additional Bidder's Conference will be held through a telephone conference call on May 29, 2018, beginning at 10:00 a.m. for Business Services, Child Care Services, and Workforce Center Services. Individuals and organizations interested in calling should contact Shawna Rendon at srendon@bvcog.org to obtain call in information. Bidders can submit questions concerning this RFP to Shawna Rendon at [\[don@bvcog.org\]\(mailto:don@bvcog.org\) no later than May 28, 2018, 5:00 p.m. \(CST\). Attendance at the bidder's conference is not mandatory. All answers to questions will be posted at \[www.bvjobs.org\]\(http://www.bvjobs.org\) by close of business on May 30, 2018.](mailto:SREN-</p></div><div data-bbox=)

Proposals in response to this RFP are still due no later than 4:00 p.m. Friday, June 1, 2018, to Workforce Solutions Brazos Valley Board at 3991 East 29th Street, Bryan, Texas 77802. Proposals arriving after the due date and time will not be accepted, regardless of the post marked date.

This RFQ can be accessed at the Board's web page at www.bvjobs.org or by request to Shawna Rendon via email at SRendon@bvcog.org or via phone at (979) 595-2801 ext. 2012. The contact person for this RFQ is Shawna Rendon, Board Program Administrator.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Deaf, hard-of-hearing and speech impaired customer may contact: Relay Texas: (800) 735- 2989 (TTY) or 711 (Voice).

TRD-201802234

Patricia Buck

Program Manager

Workforce Solutions Brazos Valley Board

Filed: May 21, 2018



How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday. Subscription cost is \$438 annually for first-class mail delivery and \$297 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printedsc



LexisNexis[®]
It's how you know[™]