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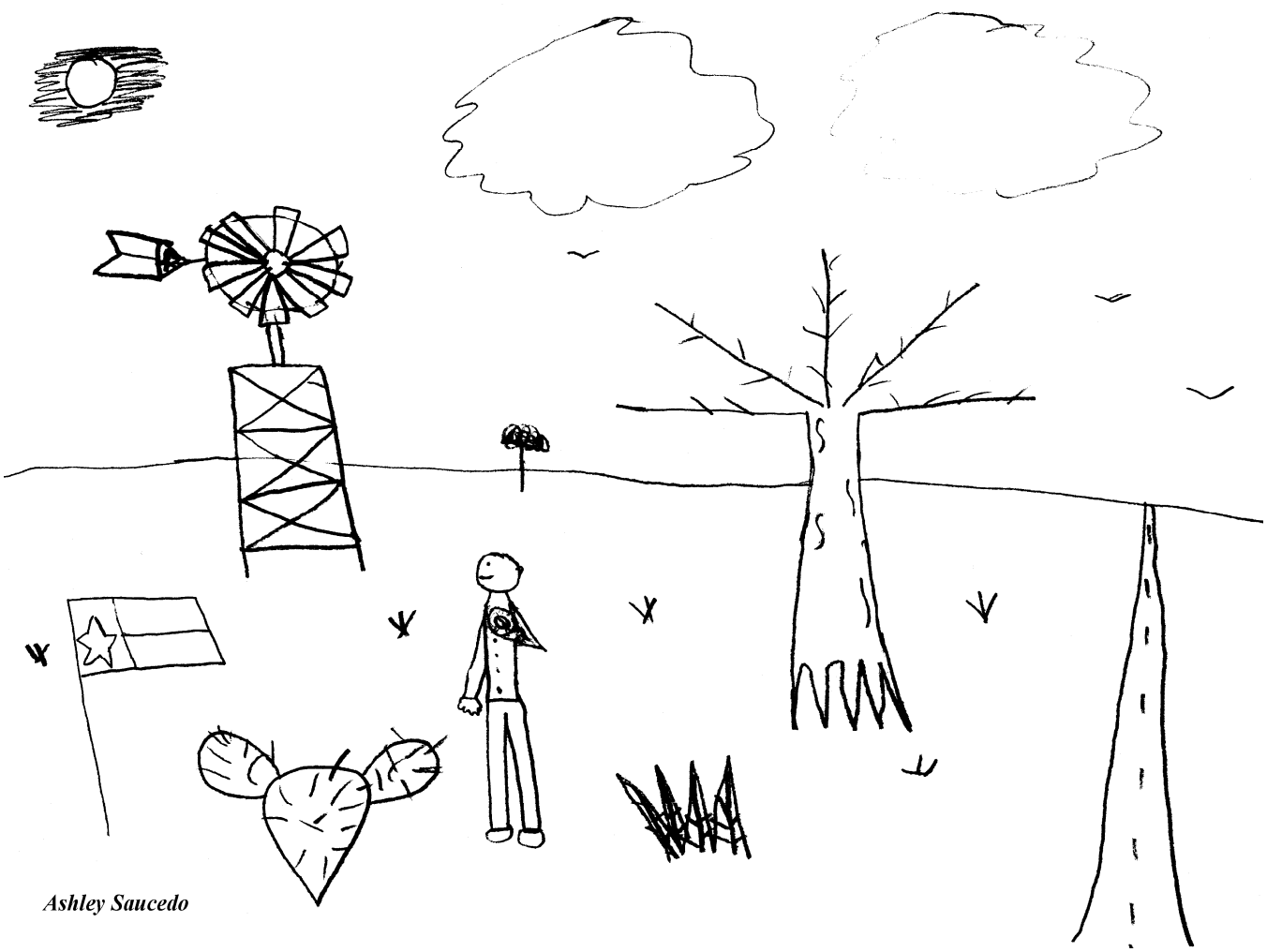

Ashley Saucedo

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*.

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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.)

Requests for Opinions

Requestor:

The Honorable Jodie Laubenberg

Chair, Committee on Elections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether article 11, section 5 of the Texas Constitution prohibits a city from amending its charter on the uniform election date in the twenty-fourth month after a previous charter amendment if that election date is not a full two calendar years from the previous amendment election (RQ-0237-KP)

Briefs requested by July 20, 2018

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

TRD-201802776

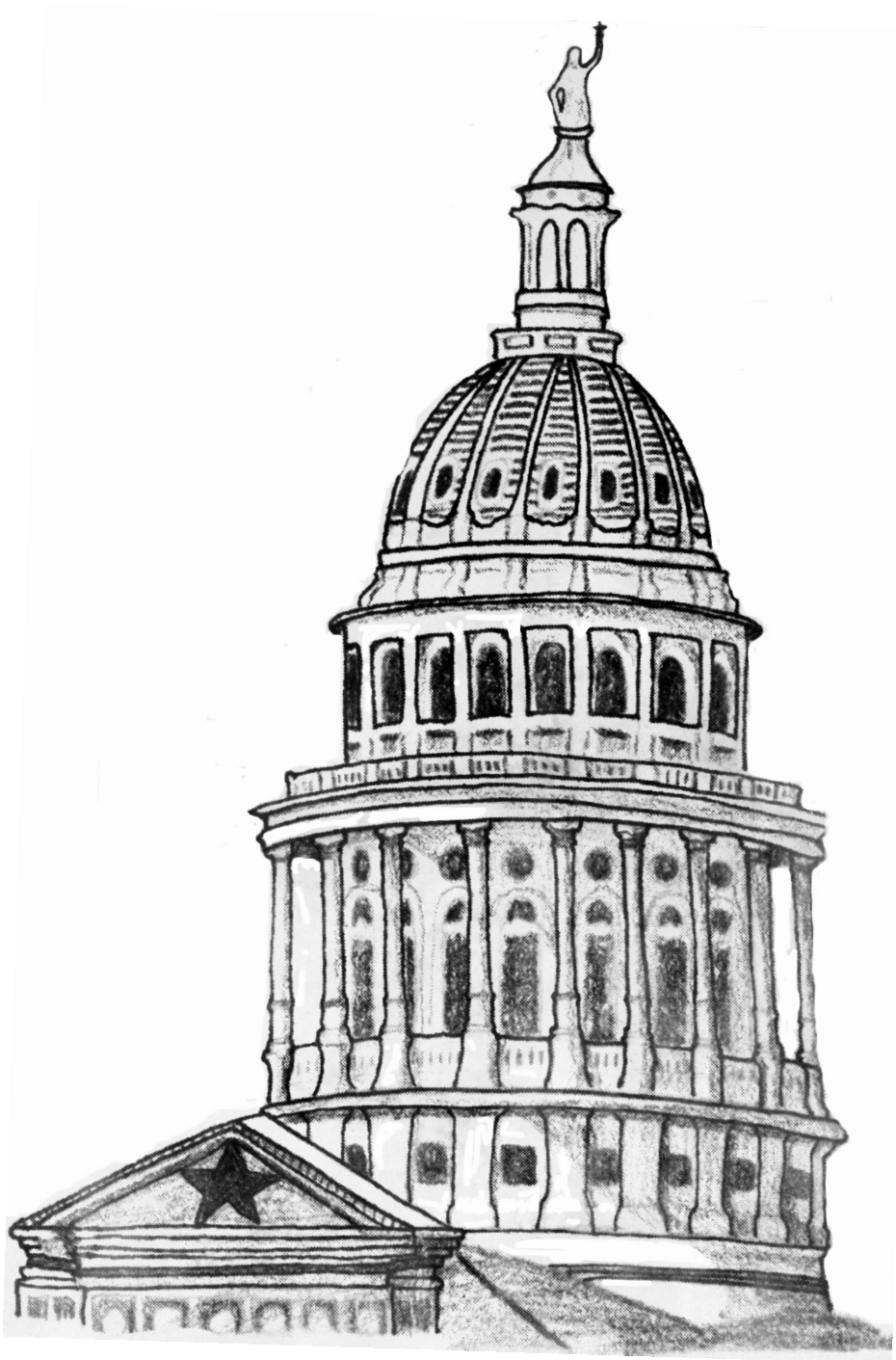
Amanda Crawford

General Counsel

Office of the Attorney General

June 20, 2018

♦ ♦ ♦



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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 87. NOTARY PUBLIC

The Office of the Secretary of State (hereinafter referred to as "the Office") proposes to reorganize Chapter 87, relating to notaries public, by proposing the repeal of 1 TAC §§87.1 - 87.7, 87.10, 87.11, 87.20 - 87.26, 87.30, 87.40 - 87.44, 87.50, 87.60 - 87.62, and 87.70 and the concurrent proposal of new §§87.1 - 87.4, 87.10 - 87.15, 87.20 - 87.22, 87.30 - 87.35, 87.40 - 87.44, 87.50 - 87.54, 87.60 - 87.63, 87.70, and 87.71. The repeal and replacement of Chapter 87 is proposed to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018 (hereinafter referred to as "HB 1217").

In addition to the general changes noted above, the following specific changes are proposed:

Section 87.1 of the proposed rules sets forth definitions of key terms used throughout the amended subchapter.

Section 87.2 of the proposed rules sets forth requirements for an applicant to be commissioned as a traditional notary public.

Section 87.3 of the proposed rules sets forth the process for electronic submission of a traditional notary public application.

Section 87.4 of the proposed rules sets forth the requirements for an applicant to be commissioned as an online notary public.

Section 87.10 of the proposed rules provides the eligibility requirements for a notary public.

Section 87.11 of the proposed rules provides the eligibility requirements specific to an online notary public.

Section 87.12 of the proposed rules sets forth the requirements for the commissioning of an escrow officer who resides in an adjacent state.

Section 87.13 of the proposed rules sets forth the process by which a traditional notary public commission is issued by the secretary of state.

Section 87.14 of the proposed rules sets forth the process by which an online notary public commission is issued by the secretary of state.

Section 87.15 of the proposed rules sets forth the process for renewal of commission.

Section 87.20 of the proposed rules sets forth the process by which an employee of a state agency can be commissioned as a notary without bond.

Section 87.21 of the proposed rules sets forth the requirements for notaries without bond who change their employment status.

Section 87.22 of the proposed rules sets forth the requirements for notaries without bond.

Section 87.30 of the proposed rules sets forth the procedures for rejection of an application and for revocation of a notary public commission.

Section 87.31 of the proposed rules sets forth the violations which constitute good cause for the office to take disciplinary action against a notary public.

Section 87.32 of the proposed rules specifies the process for submitting a complaint against a notary.

Section 87.33 of the proposed rules sets forth the procedures followed by the office when a complaint is submitted.

Section 87.34 of the proposed rules sets forth the procedures for and range of disciplinary actions by the office taken against a notary in response to a complaint.

Section 87.35 of the proposed rules sets forth specifies when the office can take disciplinary action against a notary public.

Section 87.40 of the proposed rules sets forth the procedures to be followed when performing a traditional notarization.

Section 87.41 of the proposed rules sets forth the procedures to be followed when performing an online notarization.

Section 87.42 of the proposed rules sets forth the circumstances under which a notary may refuse a request for notarial services.

Section 87.43 of the proposed rules sets forth the circumstances under which an online notary public may refuse a request for notarial services.

Section 87.44 of the proposed rules sets forth the requirements for a notary seal.

Section 87.50 of the proposed rules sets forth the restrictions to be followed when determining which personal information can be recorded in the notary record book.

Section 87.51 of the proposed rules sets forth the requirements for a notary record book.

Section 87.52 of the proposed rules sets forth the requirements of a notary public to respond to requests for copies of their record book.

Section 87.53 of the proposed rules sets forth the consequences for failure to respond to a request for public information.

Section 87.54 of the proposed rules sets forth the requirements for retaining the notary record book.

Section 87.60 of the proposed rules sets forth the requirements for and process to change a notary's official address with the office.

Section 87.61 of the proposed rules sets forth the process by which a notary can update the name under which the notary is commissioned.

Section 87.62 of the proposed rules sets forth the process by which a notary obtains a new commission.

Section 87.63 of the proposed rules sets forth the process for an online notary public to update the notary's electronic signature and seal.

Section 87.70 of the proposed rules sets forth the requirements to be followed by an online notary public to perform identity proofing and credential analysis.

Section 87.71 of the proposed rules sets forth the requirements for the online notarization system used by an online notary public.

FISCAL NOTE

Briana Godbey, Legal Manager of the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the sections are in effect, the expected fiscal impact on state government is estimated income of approximately $5,000 per year for the first four years and $5,000-10,000 in subsequent years, depending on the number of online notaries, as a result of enforcing or administering the rules as proposed. There are no expected fiscal implications for local government as a result of enforcing or administering the proposed rules and no anticipated effect on local employment or the local economy.

PUBLIC BENEFIT

Ms. Godbey has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be to implement the statutory provisions of HB 1217 and to clarify the online notarization process. Additionally, the rules reorganize and clarify provisions related to all notaries public which will have the effect of providing clearer guidance to the over 425,000 notaries public commissioned in Texas.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.

As required by Government Code §2006.002(c), the agency has determined that the proposed section may have an adverse economic effect on approximately 100 notaries per year, most of which may work as part of a small or micro business. Notaries fall within the legal industry on the NAICS chart. There are approximately 12,921 businesses in that industry in Texas and approximately 12,480 are small businesses. There will be a $50 application fee associated with the cost of compliance which will not vary between large businesses and small or micro businesses.

The application fee of $50 is associated with the application for appointment as an online notary. The fee is set to defray the costs associated with the development and maintenance of the new online commissioning system, website and educational changes, and staff to answer questions. While there is a cost associated with applying to be commissioned as an online notary public, the choice to become an online notary public is optional and there are not expected to be a high percentage of notaries who will seek to be commissioned as an online notary because of the technological requirements associated with these types of notarizations. Virginia was the first state in the nation to have online notaries and during the first six years after implementation, only .14% of the total notaries opted to also be commissioned as an online notary public. If the same trend follows in Texas, it is expected that by the end of six years, we will have approximately 600 online notaries, which equates to about 100 new online notaries being commissioned each year.

In accord with Government Code §2006.002(c-1), the agency has considered other methods to implement HB 1217 that will also minimize any adverse impact on small and micro businesses. The other methods considered by the agency to minimize any adverse impact on small and micro businesses include: (i) establishing separate commissioning requirements for small businesses and (ii) exempting small and micro businesses from the commissioning requirements.

For the following reasons, both alternate methods have been rejected. HB 1217 requires that all individuals seeking to be commissioned as an online notary public apply through the secretary of state. It would be contrary to HB 1217 to make exceptions or exemptions to the application requirement for individuals who work for small or micro businesses. Additionally, as almost all notary businesses under the legal industry are small businesses, it would negate the collection of any fee to waive or reduce the fee for small or micro businesses and HB 1217 makes no such distinction, nor does it provide for a tiered fee schedule.

The agency, after considering the purpose of the authorizing statute, does not believe it is legal or feasible to waive or modify the statutorily mandated requirements of the proposed rule for small and micro businesses. There is no anticipated fiscal impact on rural communities.

GOVERNMENT GROWTH IMPACT STATEMENT

Finally, Ms. Godbey has determined that for each year of the first five years the sections are in effect, the rules will have the following effect on government growth. The proposed changes will not create or eliminate any government programs and will not create or eliminate any employee positions. Additionally, the proposed changes will not have an effect on appropriations to the agency. The new rules do set an application fee of $50 in accordance with Section 406.105 of the Texas Government Code, which permits the secretary of state to charge an application fee in an amount necessary to administer the statutory provisions relating to online notaries public. The fees will be paid to the agency and deposited in General Revenue. The proposed changes do include new rules; therefore, by definition, the proposed changes create new regulations. The new regulations provide for implementation of the online notary public application and notarization process. The proposed changes do not expand, limit, or repeal any existing regulations, though the rules are renumbered and modernized. Additionally, the proposed changes neither increase nor decrease the number of individuals subject to the applicability of the rules. The rules implement the online notarization process and require all individuals who want to provide online notarizations to apply for a separate online commission. However, in order to be an online notary one must already be a commissioned notary public and therefore the proposed rules are not expanding or limiting the individuals subject to the rules. The proposed rules are not anticipated to have a significant effect on the state's economy.

COMMENTS

Comments on the proposed repeal and replacement of Chapter 87 may be submitted in writing to: Briana Godbey, Office of the Secretary of State, Business and Public Filings Division, P.O. Box 13697, Austin, Texas 78711-3697 or bgodbey@sos.texas.gov. Comments must be received not later than 12:00 noon, Friday, July 6, 2018.

SUBCHAPTER A. NOTARY PUBLIC QUALIFICATIONS

1 TAC §§87.1 - 87.7

STATUTORY AUTHORITY

The repeal of 1 TAC §§87.1 - 87.7 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.1. Application for a Commission as a Notary Public.

§87.2. Eligibility to Hold the Office of Notary Public.

§87.3. Issuance of the Notary Public Commission by the Secretary of State.

§87.4. Notary Seal.

§87.5. Qualification by an Officer or Employee of a State Agency Who Does Not Furnish a Notary Public Bond.

§87.6. Change in Employment Status by an Officer or Employee of a State Agency Who Has Qualified Without a Surety Bond.

§87.7. Renewal of Commission.

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

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

TRD-201802737
Lindsey Aston
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 463-5590

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SUBCHAPTER B. REJECTION AND REVOCATION

1 TAC §87.10, §87.11

STATUTORY AUTHORITY

The repeal of 1 TAC §87.10 and §87.11 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.10. Rejection of Application and Revocation of Commission.

§87.11. Good Cause.

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

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Lindsey Aston
General Counsel
Office of the Secretary of State
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SUBCHAPTER C. ADMINISTRATIVE ACTION

1 TAC §§87.20 - 87.26

STATUTORY AUTHORITY

The repeal of 1 TAC §§87.20 - 87.26 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.20. Qualification Under New Name.

§87.21. Rejection of Change of Name.

§87.22. Issuance of Amended Commission.

§87.23. Submitting a Complaint.

§87.24. Complaint Procedures.

§87.25. Disciplinary Action.

§87.26. Time for 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.

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General Counsel
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SUBCHAPTER D. REFUSAL TO PERFORM NOTARIAL SERVICES

1 TAC §87.30

STATUTORY AUTHORITY

The repeal of 1 TAC §87.30 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.30. Refusal of Requests for Notarial Services.

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

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General Counsel
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SUBCHAPTER E. NOTARY RECORDS

1 TAC §§87.40 - 87.44

STATUTORY AUTHORITY

The repeal of 1 TAC §§87.40 - 87.44 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.40. Prohibition Against Recording Personal Information.

§87.41. Form of Record Book.

§87.42. Public Information.

§87.43. Failure to Provide Public Information.

§87.44. Records Retention.

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

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General Counsel
Office of the Secretary of State
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SUBCHAPTER F. CHANGE IN ADDRESS

1 TAC §87.50

The repeal of 1 TAC §87.50 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.50. Change of Address.

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

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SUBCHAPTER G. ELECTRONIC SUBMISSIONS OF NOTARY APPLICATIONS AND BONDS

1 TAC §§87.60 - 87.62

STATUTORY AUTHORITY

The repeal of 1 TAC §§87.60 - 87.62 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.60. Electronic Submission.

§87.61. Records Retention for Electronic Submissions.

§87.62. Applications on Behalf of an Applicant with a Criminal Conviction.

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

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General Counsel
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SUBCHAPTER H. APPOINTMENT OF QUALIFIED ESCROW OFFICER AS NOTARY PUBLIC

1 TAC §87.70

STATUTORY AUTHORITY

The repeal of 1 TAC §87.70 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.70. Qualification by an Escrow Officer Residing in an Adjacent State.

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

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Lindsey Aston
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5590

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SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§87.1 - 87.4

STATUTORY AUTHORITY

The concurrent proposal of new §§87.1 - 87.4 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.1. Definitions.

Words and terms defined in the Texas Government Code, Chapter 406, shall have the same meaning in this chapter. For the purposes of this chapter the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Credential means a valid, unexpired identification card or other document issued by the federal government or any state government, as defined by §311.05 of the Government Code, that contains the photograph and signature of the principal; and, with respect to a deed or other instrument relating to a residential real estate transaction, a current passport issued by a foreign country.

(2) Credential Analysis means the process which complies with Subchapter H of this chapter by which the validity of a government-issued identification credential is affirmed by a third party through review of public and proprietary data sources.

(3) Digital Certificate means a computer-based record or electronic file issued to a notary public or applicant for appointment as a notary public for the purpose of creating an official electronic signature. The digital certificate shall be kept in the exclusive control of the notary public.

(4) Identity Proofing means the process which complies with Subchapter H of this chapter by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources.

(5) Online Notary Public means an individual commissioned by the secretary of state as an online notary. An online notary has authority:

(A) as a traditional notary public; and

(B) to perform an online notarization as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(6) Personal appearance or personally appear means:

(A) when performing a notarization other than an online notarization, the principal for whom the notarization is being performed physically appeared before the notary public at the time of the notarization in a manner permitting the notary public and the principal to see, hear, communicate and give identification credentials to each other; and

(B) for an online notarization, the principal for whom the notarization is being performed appears by an interactive two-way audio and video communication that meets the online notarization requirements as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(7) Principal means an individual:

(A) whose signature is notarized in a traditional or online notarization; or

(B) taking an oath or affirmation from a notary public but not in the capacity of a witness for the online notarization.

(8) Notary Public means an individual commissioned by the secretary of state under both Subchapters A and C, Chapter 406 of the Government Code.

(9) Traditional Notary Public means an individual commissioned by the secretary of state under Subchapter A, Chapter 406 of the Government Code. A traditional notary public does not have the authority to perform an online notarization unless also commissioned as an online notary public.

§87.2. Application for Commission as a Traditional Notary Public.

(a) The secretary of state appoints notaries public under the provisions of article IV, §26 of the Texas Constitution and Chapter 406, Government Code.

(b) An individual applying for a traditional notary public commission shall use the application form prescribed by the secretary of state. The application shall include:

(1) the applicant's name to be used in acting as a traditional notary public;

(2) the applicant's mailing address;

(3) the applicant's county of residence;

(4) the applicant's date of birth;

(5) the applicant's driver's license number or the number of other official state-issued identification; and

(6) the applicant's social security number.

(c) An applicant must secure a bond if required to do so by §406.010 of the Government Code. To evidence the bond, the application shall include the signature of a person authorized by the surety company providing the bond.

(d) The applicant shall execute, in the name under which the commission is sought, the statement of officer as required by article XVI, §1 of the Texas Constitution.

(e) The application form is available on the secretary of state web site or may be obtained by writing the Office of the Secretary of State, Notary Public Unit, P.O. Box 13375, Austin, Texas 78711. See Form 2301. The application form for a notary who is an officer or employee of a state agency is Form 2301-NB, available on the web site maintained by the State Office of Risk Management.

§87.3. Electronic Submission of Traditional Notary Public Application.

(a) The secretary of state has developed a system for electronic submission of the application for a traditional notary public commission, the bond required under §406.010 of the Government Code, and the statement of officer. The secretary of state authorizes the submission of these documents electronically on behalf of a traditional notary public under the following terms and conditions:

(1) the submitter must comply with the technical specifications contained in the eNotary Web Service Consumer's Guide available through the Information Technology Division of the Office of the Secretary of State;

(2) the traditional notary public application and the statement of officer signed by the applicant and the surety bond signed by an officer or attorney-in-fact for the surety must be attached to the electronic submission as an image in the format specified in the eNotary Web Service Consumer's Guide; and

(3) all fees must be paid by prepaid account, LegalEase® or credit card.

(b) If the applicant is qualified, the secretary of state shall cause the commission to be issued and the educational materials to be sent to the traditional notary public. On commission, the applicable fees will be charged to the prepaid account, LegalEase® or the credit card.

(c) If the application is rejected, the secretary of state will return a notice of the rejection to the submitter electronically. On rejection, no fees are charged to the account, LegalEase® or to the credit card.

(d) Status of a traditional notary public application submission may be checked through use of a web service interface.

(e) If the submitter is not able to consistently comply with the technical specifications and the submissions are failing as a result, the secretary of state may revoke the privilege of the submitter to submit electronically until all technical issues are resolved to the satisfaction of the secretary of state.

(f) As part of the electronic submission, the submitter is responsible for accurately entering the data elements related to the application. Repeated and consistent entry errors may result in a revocation of the privilege of the submitter to submit electronically.

(g) The submitter shall retain the original signed application, surety bond and statement of officer until the commission is issued by the secretary of state.

(h) The secretary of state will not accept electronic applications on behalf of an applicant who has been convicted of a felony or a crime of moral turpitude. The application under these circumstances (along with the statement of officer, the bond, the explanation of the criminal conviction and the applicable fees) must be delivered to the secretary of state by mail, courier or personal delivery.

§87.4. Submission of Online Notary Public Application.

(a) An individual applying for an online notary public commission shall use the electronic submission platform developed by the secretary of state.

(b) The application shall include:

(1) the applicant's name to be used in acting as an online notary public, which shall match the name on the applicant's traditional notary public commission;

(2) the applicant's email address;

(3) the applicant's digital certificate;

(4) a copy of applicant's electronic seal in an acceptable file format;

(5) the applicant's notary public identification number, as assigned by the secretary of state;

(6) an executed statement of officer, as required by article XVI, §1 of the Texas Constitution; and

(7) a statement certifying that the applicant:

(A) will comply with the standards set forth in this chapter relating to identity proofing and credential analysis;

(B) will use a third party provider who has provided the notary with evidence of its ability to provide an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant when attaching or logically associating the notary's electronic seal and digital certificate to an electronic document;

(C) will, upon request by the secretary of state, promptly provide any necessary instructions or techniques supplied by a vendor that allow the online notary public's digital certificate and seal to be read and authenticated; and

(D) is at least 18 years of age, a resident of the State of Texas, and has not been convicted of a felony or a crime involving moral turpitude.

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

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SUBCHAPTER B. ELIGIBILITY AND QUALIFICATION

1 TAC §§87.10 - 87.15

STATUTORY AUTHORITY

The concurrent proposal of new §§87.10 - 87.15 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.10. Eligibility to Hold the Office of Notary Public.

(a) Subject to the provision in subsection (b) of this section and §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State), a person is eligible to be a notary public if the person is 18 years of age or older and a resident of Texas.

(b) A person is not eligible to be a notary public if the person was convicted of a crime involving moral turpitude or a felony and the conviction has become final, has not been set aside, and no pardon or certificate of restoration of citizenship rights has been granted.

(c) A crime involving moral turpitude includes the commission of a crime involving dishonesty, fraud, deceit, misrepresentation, deliberate violence, moral depravity, or that reflects adversely on the applicant's honesty, trustworthiness, or fitness as a notary public, which may include, but not be limited to:

(1) Class A and B type misdemeanors which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted; and

(2) felony convictions which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted.

(d) Class C type misdemeanor convictions shall not be considered in determining eligibility.

(e) If the secretary of state discovers, at any time, that an applicant or commissioned notary public is not eligible, the secretary of state will reject the notary public application or revoke the notary public commission.

§87.11. Eligibility to be Commissioned as an Online Notary Public.

In addition to the eligibility requirements in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public), an applicant must hold a commission as a traditional notary public before being eligible for appointment as an online notary public.

§87.12. Qualification by an Escrow Officer Residing in an Adjacent State.

(a) An applicant who is qualified as an escrow officer within the meaning assigned by §2652.051, Insurance Code, is not required to be a resident of Texas if the applicant is a resident of New Mexico, Oklahoma, Arkansas or Louisiana.

(b) The secretary of state shall commission the applicant if, notwithstanding the residency requirements, the applicant satisfies the conditions of subsection (a) of this section and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State).

(c) A notary public, appointed under this section, who ceases to be qualified under this section, must voluntarily surrender the notary public commission.

§87.13. Issuance of the Traditional Notary Public Commission by the Secretary of State.

(a) The secretary of state shall issue a traditional notary public commission to a qualified applicant. An applicant is qualified if:

(1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application;

(B) the bond as provided in §406.010, Government Code, if required;

(C) the statement of officer required by article XVI, §1 Texas Constitution;

(D) payment to the secretary of state of fees required by §406.007, Government Code; and

(3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each traditional notary public who has qualified. A commission is effective as of the date of qualification.

§87.14. Issuance of the Online Notary Public Commission by the Secretary of State.

(a) The secretary of state shall issue an online notary public commission to a qualified applicant. An applicant is qualified if:

(1) the applicant meets the eligibility requirements stated in §87.11 of this title (relating to Eligibility to be Commissioned as an Online Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application;

(B) the statement of officer required by article XVI, §1 Texas Constitution;

(C) payment to the secretary of state the application fee of $50; and

(3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each online notary public who has qualified. A commission is effective as of the date of qualification and shall expire on the same date as applicant's corresponding traditional notary public commission.

§87.15. Renewal of Commission.

(a) A notary public seeking to renew either a traditional commission or both a traditional and online commission shall file an application for renewal in the same manner and on the same form as if filing an original application for commission. The secretary of state will accept applications for renewal not sooner than 90 days before the expiration of the notary public's current commission. The renewal must be received by the secretary of state no later than the expiration date of the notary public's current commission.

(b) The secretary of state shall determine eligibility for renewals according to the same standards as initial applicants, in accordance with this chapter and §406.004, Government Code. The secretary of state is not bound by prior determinations of eligibility.

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SUBCHAPTER C. NOTARIES WITHOUT BOND

1 TAC §§87.20 - 87.22

STATUTORY AUTHORITY

The concurrent proposal of new §§87.20 - 87.22 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.20. Qualification by an Officer or Employee of a State Agency.

(a) An applicant who is an officer or employee of a state agency is not required to provide a surety bond. For the purpose of this chapter, "state agency" has the meaning assigned by §2052.101, Government Code.

(b) An applicant who is an officer or employee of a state agency and does not provide a surety bond must complete the traditional notary public application entitled "Application for Appointment as a Notary Public Without Bond" (Form 2301-NB).

(c) The State Agency employing the applicant must submit the completed application to the State Office of Risk Management.

(d) The State Office of Risk Management shall complete the verification certificate on the application and forward the completed application to the Office of the Secretary of State for processing.

(e) The secretary of state shall commission the applicant if:

(1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application verified by the State Office of Risk Management;

(B) the statement of officer required by article XVI, §1 Texas Constitution;

(C) the payment of fees required by §406.007(a)(2) and §406.007(b), Government Code; and

(3) no good cause exists for rejecting the application.

§87.21. Change in Employment Status by an Officer or Employee of a State Agency Who Has Qualified Without a Surety Bond.

(a) If a notary public who has qualified without a surety bond transfers to another state agency, the agency to which the notary public transfers shall notify the State Office of Risk Management and the Office of the Secretary of State of the transfer.

(b) If a notary public terminates state employment, the notary public shall:

(1) voluntarily surrender the notary public commission;

(2) purchase and provide evidence to the secretary of state of the purchase of a notary public bond for the time period remaining on the notary's current term of office; or

(3) voluntarily surrender the notary public commission and apply for a new term of office, provide a notary public bond, and pay the applicable fees.

(c) Failure to take one of the actions set forth in subsection (b) of this section within 30 days of termination of state employment is good cause for revocation of the notary public's commission.

§87.22. Special Requirements for Notaries Without Bond.

(a) A notary public commissioned as a notary public without bond shall obtain a seal which complies with the requirements of

§406.013, Government Code and §87.44 of this title (relating to Notary Seal) and which contains an additional line reading "Notary without Bond".

(b) A state employee is not prohibited from purchasing a notary bond at personal expense. However, an individual commissioned as a notary without bond shall only notarize documents pursuant to their official state duties.

(c) Agencies shall require notaries without bond to attend a notary training class, either provided internally or externally.

(d) Notaries without bond who notarize documents outside of their official state duties or who fail to use the "Notary without Bond" seal shall be subject to disciplinary action by their respective agencies and such action may constitute good cause under §87.31 of this title (relating to Good Cause).

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SUBCHAPTER D. ADMINISTRATIVE ACTION

1 TAC §§87.30 - 87.35

STATUTORY AUTHORITY

The concurrent proposal of new §§87.30 - 87.35 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.30. Rejection of Application and Revocation of Commission.

The secretary of state shall, for ineligibility or good cause, reject any application, revoke the commission of any notary public, or take other disciplinary action, as outlined in §87.34 of this title (relating to Disciplinary Action), against a notary public as the secretary of state deems appropriate. Rejection, revocation, and suspension proceedings will be held pursuant to the right of notice, hearing, and adjudication as set out in the rules of practice and procedure before the Office of the Secretary of State, the rules of the State Office of Administrative Hearings and the Administrative Procedure Act, Government Code, §§2001.001 - 2001.902. Any party to a contested case has the right to be represented by legal counsel. Such action will be subject to the right of appeal to a district court of Travis County.

§87.31. Good Cause.

Good cause may include the following:

(1) a false statement knowingly made in a notary public application;

(2) a final conviction for the violation of any law concerning the regulation of the conduct of notaries public in this state or any other state;

(3) use of the phrase "notario" or "notario publico" in connection with advertising or offering the services of a notary public;

(4) false representation as an attorney as specified in §406.017, Government Code;

(5) a failure to fully and faithfully discharge any of the duties or responsibilities required of a notary public;

(6) the unauthorized practice of law;

(7) a failure to utilize a correct notary seal as described in §406.013 and §406.101(5), Government Code and this chapter;

(8) a failure to administer an oath or affirmation as required by law;

(9) the collection of a fee in excess of the fees authorized by §406.024 and §406.111, Government Code;

(10) the execution of any certificate as a notary public containing a statement known to the notary public to be false;

(11) a failure to complete the notarial certificate at the time the notary public's signature and seal are affixed to the document;

(12) the advertising or holding out in any manner that the notary public is an immigration specialist, immigration consultant, or any other title or description reflecting an expertise in immigration matters;

(13) the use of false or misleading advertising of either an oral or written nature, whereby the notary public has represented or indicated that he or she has duties, rights, powers, or privileges that are not possessed by law;

(14) performing a notarization when the purported principal did not personally appear before the notary public at the time the notarization is executed;

(15) previous disciplinary action against the notary public in accordance with these sections;

(16) a failure to comply with, or violation of, a previous disciplinary action taken pursuant to §87.34 of this title (relating to Disciplinary Action);

(17) a failure to promptly respond to a request for public information in accordance with §87.52 of this title (relating to Public Information);

(18) a failure to properly identify the individual whose signature is being notarized;

(19) a failure to keep a notary record as described in §406.014 and §406.108, Government Code, and Chapter 87 of this title;

(20) a failure to include in the notarial certificate for an online notarization a notation that the notarization is an online notarization;

(21) a failure to take reasonable steps to ensure that the two-way audio-visual communication used during an online notarization is secure from unauthorized interception;

(22) a failure to safely and securely maintain notary materials;

(23) performing a notarial act that the notary public is not authorized to perform;

(24) use of a digital certificate or electronic seal that has expired or is no longer valid;

(25) a failure to report a new digital certificate or electronic seal as required by §87.63 of this title (relating to Changes to Digital Certificate and Electronic Seal for Online Notary);

(26) notarizing one's own signature;

(27) a failure to pay the filing fee required by §406.007, Government Code, and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State) or when such payment was made by an instrument that was dishonored when presented by the state for payment;

(28) a failure to timely respond to a request for information from the secretary of state; and

(29) a failure to maintain a current address as required by §406.019, Government Code.

§87.32. Submitting a Complaint.

(a) The jurisdiction of the secretary of state to investigate a complaint is limited to individuals who are commissioned or have applied for commission or renewal of a commission as a Texas notary public. The jurisdiction of the secretary of state to investigate a complaint ceases upon the expiration, revocation or surrender of a notary public commission, except as provided in §87.35 of this title (relating to Time for Action).

(b) A person harmed by the actions of a notary public may file a complaint with the secretary of state on a form prescribed by the secretary of state. The complaint shall include:

(1) the name of the notary public who is the subject of the complaint;

(2) the expiration date of the notary public's current commission;

(3) the name, mailing address, and email address of the individual filing the complaint;

(4) whether the notary was performing an online notarization;

(5) a recitation of the facts, within the personal knowledge of the complainant, relating to the alleged misconduct by the notary public; and

(6) copies of the notarized documents that are the subject of the complaint.

(c) The complaint shall be signed and verified by the person alleging misconduct on the part of the notary public.

(d) The secretary of state may, for good cause, as defined in §87.31 of this title (relating to Good Cause), and/or as otherwise referenced in this title, initiate its own complaint against a notary public.

§87.33. Complaint Procedures.

(a) The secretary of state may determine that the allegations in the complaint are not sufficient to warrant formal disciplinary action. In such case, the secretary of state may:

(1) take no action on the complaint;

(2) informally advise the notary public of the appropriate conduct and the applicable statutes and rules governing the conduct; or

(3) request further information from the complainant or the notary public prior to taking action.

(b) If the secretary of state determines that the complaint alleges sufficient facts to constitute good cause for disciplinary action against the notary public, and the complaint complies with §87.32 of this title (relating to Submitting a Complaint), the secretary of state shall send a copy of the complaint, with any attachments the secretary of state deems to be relevant, to the notary public with a request to the notary to respond to the statements in the complaint.

(c) The notary public must respond to the complaint in writing. The response must:

(1) specify any disputed facts and provide such additional information as the notary public shall desire;

(2) be signed and sworn to by the notary public before a person authorized to administer oaths;

(3) include copies of the pages of the notary record book referencing the notarization that is the subject of the complaint; and

(4) be received by the secretary of state within 21 days of the date of the secretary of state's notice of the complaint to the notary public.

(d) The secretary of state shall review the response and determine whether further administrative action is appropriate. If the secretary determines that no further action is appropriate, the secretary shall notify the notary public and the complainant of the determination in writing.

(e) If the secretary determines that further administrative action is appropriate, the secretary shall follow the procedures set forth in this §87.34 of this title (relating to Disciplinary Action).

§87.34. Disciplinary Action.

(a) The secretary of state has discretion to determine that the conduct that forms the basis of a complaint against a notary public does not warrant disciplinary action against the notary public and take no further action on the complaint. If the secretary of state determines that disciplinary action should be taken, the secretary of state may pursue the following disciplinary actions against individuals commissioned pursuant to Subchapter A or C, Chapter 406, Government Code:

(1) issue a written reprimand to the notary public; or

(2) require the notary public to enter into an agreement to:

(A) not engage in any further misconduct;

(B) agree to voluntarily surrender the notary public commission;

(C) accept a suspension of the notary public commission for a set period of time;

(D) complete a course of study relating to the powers, duties, and responsibilities of a notary public;

(E) not seek renewal of the notary public commission for a specified period of time; or

(F) take such other action as the secretary deems appropriate; or

(3) take action to revoke the notary public commission.

(b) If an individual has been commissioned as a notary public under both Subchapters A and C of Chapter 406, Government Code,

the office has the discretion to pursue revocation of either the online notary public commission alone or both the traditional and online notary public commission.

(c) If no agreement can be reached, before taking action to suspend or revoke the notary public commission, the secretary of state shall give written notice to the notary of a right to a hearing in accordance with the rules of practice and procedure before the secretary of state. If a hearing is timely requested, the secretary of state shall follow the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code governing the initiation and conduct of a contested case proceeding.

(d) It is within the secretary of state's discretion to determine that no action should be taken or to enter into an agreement with the notary public regarding the appropriate action. The secretary of state shall close a complaint file upon a determination that no further action is necessary or conclusion of an agreement with the notary public. After a complaint file is closed, the secretary of state will take no further action on the complaint and will not accept an additional complaint with the same or substantially similar allegations.

§87.35. Time for Action.

The secretary of state may take disciplinary action for an act or omission which occurred during a prior term of office. The secretary may also require any pending complaints against a notary public that remain at the expiration of the notary public's prior commission to be resolved prior to accepting a renewal or new application for appointment as a notary public. Failure to reach a resolution on an unresolved complaint may result in the rejection of an application for appointment or renewal.

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SUBCHAPTER E. NOTARY PROCEDURES

1 TAC §§87.40 - 87.44

STATUTORY AUTHORITY

The concurrent proposal of new §§87.40 - 87.44 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.40. Traditional Notarization Procedures.

(a) A traditional notary public shall not perform a notarization if the principal does not personally appear before the notary at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(b) The methods by which a traditional notary public identifies a principal are as follows:

(1) Traditional notary public personally knows the principal; or

(2) Principal is introduced by oath of credible witness who personally knows the principal and either is personally known to the traditional notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or

(3) Identification by a credential.

(c) For all notarial acts that require a notarial certificate, the traditional notary public shall attach a notarial certificate that names the principal, the date of the notarization, the state and county in which the notarization is performed, and language evidencing the type of notarial act performed. The notarial certificate shall be signed and include an impression of the notary's seal.

(d) The traditional notary public shall keep a record of all notarial acts in accordance with §406.014, Government Code, and this chapter.

(e) This section shall apply to a traditional notary public who performs notarizations on tangible or electronic records.

§87.41. Online Notarization Procedures.

(a) An online notarization may only be performed by a notary who is commissioned as an online notary public.

(b) An online notary public shall not perform an online notarization if the online notary public is not physically in Texas at the time of the notarization.

(c) An online notary public shall not perform an online notarization if the principal does not personally appear before the notary public at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(d) The methods by which an online notary public identifies a principal are as follows:

(1) Online notary public personally knows the principal; or

(2) Principal is introduced by oath of credible witness who personally knows the principal and either is personally known to the online notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or

(3) Principal or credible witness is identified using the identity proofing and credential analysis standards in accordance with subchapter H of this chapter.

(e) For all notarial acts that require a notarial certificate, the online notary public shall attach an electronic notarial certificate that identifies the principal, the date of the notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and language evidencing the type of the notarial act performed. The notarial certificate shall be signed by affixing the online notary public's digital certificate and include an attachment of the online notary public's electronic seal.

(f) The liability, sanctions, and remedies for the improper performance of online notarial acts are the same as described and provided by law for the improper performance of traditional notarial acts.

(g) An online notary public shall keep a record of all notarial acts in accordance with §406.108, Government Code, and Chapter 87 of this title. The record shall include a recording of the audio-visual conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence by the principal, if the principal is not personally known to the online notary public. The recording shall include, at minimum:

(1) confirmation by the notary public that the principal has successfully completed identity proofing and credential analysis;

(2) visual confirmation of the identity of the principal through visual inspection of the credential used during credential analysis; and

(3) the actual notarial act performed.

(h) If the principal is personally known to the online notary public, the audio-visual conference shall include a statement to that effect and a recording of the actual notarial act performed.

(i) The online notary public shall not disclose any access information used to affix the notary's digital certificate and seal except when requested by the secretary of state, law enforcement, the courts, and with reasonable precautions, electronic document preparation and transmission vendors.

(j) Online notaries public shall attach their digital certificate and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

§87.42. Refusal of Requests for Notarial Services.

(a) A notary public is authorized to refuse to perform a notarial act if:

(1) the notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;

(2) the notary public has reasonable grounds to believe that the document in connection with which the notarial act is requested may be used for an unlawful or improper purpose;

(3) the notary public has reasonable grounds to believe the signing party does not have the capacity to understand the contents of the document; or

(4) the notary public is not familiar with the type of notarization requested.

(b) A notary public who is employed by a governmental body shall not perform notarial services that interfere with the notary's discharge of the notary's duties as a public employee.

(c) An employer may limit or prohibit an employee who is a notary public from notarizing during work hours.

(d) A notary public may not refuse a request for notarial services on the basis of the sex, age, religion, race, ethnicity or national origin of the requesting party.

(e) A notary public should refuse a request for notarial services only after careful deliberation.

§87.43. Reasons to Refuse Online Notarization.

In addition to those in §87.42 of this title (relating to Refusal of Requests for Notarial Services), an online notary is authorized to refuse to perform an online notarization if:

(1) The online notary public is unable to verify the identity of the principal using an acceptable means of identification in accordance with Subchapter H;

(2) The online notary public is unable to verify the security of the two way audio visual transmission;

(3) The signature of the principal cannot be attached to the electronic document; or

(4) The digital certificate or electronic seal of online notary public must be attached to the electronic document in a manner that renders any subsequent change or modification to the document evident.

§87.44. Notary Seal.

(a) The name on the notary public seal must match the name, as stated on the application, under which the notary public is commissioned and performs all notarial acts.

(b) For all applicants commissioned or recommissioned on or after January 1, 2016, the notary public seal must contain the identifying number issued by the secretary of state.

(c) For notaries public who were commissioned or recommissioned prior to January 1, 2016, the seal of such notaries is not required to contain the identifying number issued by the secretary of state until the notary is recommissioned in accordance with the procedures specified in §406.011, Texas Government Code, and §87.15 of this title (relating to Renewal of Commission). The seal of notaries who were commissioned or recommissioned prior to January 1, 2016, may, however, contain the identifying number issued by the secretary of state prior to the notary being recommissioned in accordance with the procedures specified in §406.011, Texas Government Code, and §87.15 of this title.

(d) The notary seal shall remain within the exclusive control of the notary public at all times.

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General Counsel
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Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 463-5590

SUBCHAPTER F. NOTARY RECORDS

1 TAC §§87.50 - 87.54

STATUTORY AUTHORITY

The concurrent proposal of new §§87.50 - 87.54 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.50. Prohibition Against Entering Personal Information in a Notary Record Book.

(a) A notary public (other than a court clerk notarizing instruments for the court) shall not record in the notary's record book:

(1) an identification number that was assigned by a governmental agency or by the United States to the principal and that is set forth on the identification card or passport presented as identification;

(2) any other number that could be used to identify the principal of the document; or

(3) a biometric identifier, including a fingerprint, voice print, and retina or iris image.

(b) This section does not prohibit a notary public from recording a number related to the mailing address of the principal of the document or the instrument.

(c) This section does not apply to the audio-visual recording required by an online notary public performing an online notarization.

(d) A notary public who inadvertently records information prohibited under subsection (a) of this section shall redact such information prior to providing public access to or copies of the notary record book.

§87.51. Form of Record Book.

(a) Notary records, other than records of online notarizations, may be maintained either in a book or electronically in a computer or other storage device so long as the records are adequately backed-up and are capable of being printed in a tangible medium when requested.

(b) Records of an online notarization shall be maintained electronically in computers or other storage devices that are capable of recording the information required by §406.108, Government Code, including a recording of any video and audio conference that is the basis for identifying the principal. An online notary public may contract with a third party to provide such storage if the third party:

(1) has provided reasonable evidence to the online notary public that it is capable of providing such services; and

(2) provides complete access to the online notary public of all the notary's records for an agreed period of time, which at minimum, complies with the retention requirements in §87.54 of this title (relating to Records Retention) even if such a contract is terminated. If the contract between the online notary public and the third party is terminated, all records must be transferred to the online notary public.

(c) The records of a notary public shall remain within the exclusive control of the notary public at all times.

(d) A notary public who performs multiple notarizations for the same principal within a single document may abbreviate the entry of those notarizations in the notary record book, except that a separate entry must be made for each type of notarial act. The abbreviated entry must contain all the information required by §406.014, Government Code, and must include the number of notarizations performed within the specified document.

§87.52. Public Information.

(a) Subject to subsection (b) of this section, records regarding notarial acts performed are public information. On payment of all fees, the notary public shall promptly provide a certified copy of any entries in the notary public's records to any person requesting the copy. The notary shall provide the certified copy no later than 10 business days from the date of receipt of the fees, unless the notary cannot produce the certified copy within 10 business days from the date of receipt of the fees, in which case the notary shall certify that fact in writing to the person requesting the copy on or before the 10th business day from the date of receipt of the fees, and set a date and hour within a reasonable time when the certified copy will be provided, and shall provide the information by that date and hour. If the notary has inadvertently included personal identifiable information in the record contrary to §87.50 of this title (relating to Prohibition Against Recording Personal Information), the notary must redact that personal information prior to release of the information.

(b) If any portion of the audio visual recording of an online notarization includes biometric information or includes an image of the identification card used to identify the principal, that portion of the recording is confidential and shall not be released without consent of the individual(s) whose identity is being established, unless ordered by a court of competent jurisdiction or upon request by the secretary of state.

§87.53. Failure to Provide Public Information.

Failure of a notary public to promptly and adequately respond to a request for public information in accordance with §87.52 of this title (relating to Public Information) may be good cause for suspension or revocation of a notary commission or other disciplinary action against the notary.

§87.54. Records Retention.

(a) Records of a notarization other than an online notarization shall be retained, in a safe and secure manner, for the longer of the term of the commission in which the notarization occurred or three years following the date of notarization.

(b) Records of an online notarization shall be retained, in a safe and secure manner, for five years following the date of the notarization. An online notary public must also maintain a back-up of the electronic records for the same period of time. Both the original records and the back-up shall be protected from unauthorized use.

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

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Lindsey Aston
General Counsel
Office of the Secretary of State
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SUBCHAPTER G. CHANGES AFTER COMMISSIONING

1 TAC §§87.60 - 87.63

STATUTORY AUTHORITY

The concurrent proposal of new §§87.60 - 87.63 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.60. Change of Address.

(a) A notary public must notify the secretary of state in writing of a change in address within 10 days of the change. To notify the secretary of state of a change of address, the notary public should complete and submit Form 2302 (Notary Public Change of Address Form). This form is available on the secretary of state web site.

(b) The secretary of state sends all official notices, including notices of complaints and requests to respond to complaints, to the notary public at the address on file with the secretary's office. Failure to change the address may, consequently, result in a revocation of the notary commission if, for example, the notary fails to timely respond to a complaint or to a request for public information.

(c) A notary public who removes his or her residence from Texas or no longer qualifies under the residency exceptions provided under §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State) vacates the office of notary public and must surrender the notary commission to the secretary of state.

§87.61. Qualification Under New Name.

(a) During the four-year term of office, a notary public may change the name on the notary commission by submitting the following to the secretary of state:

(1) an Application for Change of Name as a Texas Notary Public (Form 2305 available on the secretary of state web site);

(2) for traditional notaries public, a rider or endorsement to the bond on file with the secretary of state from the surety company or its agent or representative specifying the change of name;

(3) the current certificate of commission or a signed and notarized statement that the notary public will perform all future notarial acts under the name specified on the amended commission; and

(4) the statutory fee equal to the sum of the fee for the issuance of a commission and the fee for filing of a bond.

(b) An online notary public shall check the appropriate box on Form 2305 to update the name on both the traditional and online notary commission and shall pay the fee for issuance of two commissions and the bond.

§87.62. Issuance of Amended Commission.

(a) If the submission of the change of name complies with §87.61 of this title (relating to Qualification Under New Name), the secretary of state shall issue an amended commission to the notary public in the name requested. Upon issuance of the amended commission, the notary public must perform all notarial acts using the name on the amended commission.

(b) Upon qualifying under a new name, a notary public must obtain a new seal that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

(c) If the notary public who qualifies under a new name is commissioned as both a traditional and online notary, the notary shall obtain both a new traditional seal and new electronic seal and digital certificate that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

§87.63. Changes to Digital Certificate and Electronic Seal for Online Notary.

(a) An online notary public shall at all times maintain an electronic seal and a digital certificate that includes the online notary's electronic signature. Both the electronic seal and digital certificate must comply with the provisions of Chapter 406, Government Code, and this chapter.

(b) An online notary public shall replace an electronic seal or digital certificate under the following circumstances:

(1) the electronic seal or digital certificate has expired;

(2) the electronic seal or digital certificate has been revoked or terminated by the device's issuing or registering authority; or

(3) the electronic seal or digital certificate is for any reason no longer valid or capable of authentication.

(c) An online notary public who replaces an electronic seal or digital certificate shall provide the following to the secretary of state within 10 days of the replacement:

(1) the electronic technology or technologies to be used in attaching or logically associating the new electronic seal or digital certificate to an electronic document;

(2) applicant's new digital certificate, if applicable;

(3) a copy of applicant's new electronic seal, if applicable; and

(4) any necessary instructions or techniques supplied by the vendor that allow the notary's electronic seal or digital certificate to be read and authenticated.

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

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Lindsey Aston
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Office of the Secretary of State
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SUBCHAPTER H. MINIMUM REQUIREMENTS FOR ONLINE NOTARIZATIONS

1 TAC §87.70, §87.71

STATUTORY AUTHORITY

The concurrent proposal of new §87.70 and §87.71 is proposed under the authority of §406.023 of the Government Code which authorizes the secretary of state to adopt rules to administer and enforce Subchapter A, Chapter 406 of the Government Code and §406.103 of the Government Code, as enacted by the 85th Legislature, Regular Session, in House Bill 1217, effective July 1, 2018, which authorizes the secretary of state to adopt rules necessary to implement Subchapter C, Chapter 406 of the Government Code, including rules to facilitate online notarizations.

Cross reference:

Subchapter A, Chapter 406, Government Code

Subchapter C, Chapter 406, Government Code

§87.70. Identity Proofing and Credential Analysis Standards.

(a) Identity proofing and credential analysis must be performed by a reputable third party who has provided evidence to the

online notary public of the ability to satisfy the requirements of this chapter.

(b) Identity proofing is performed through dynamic knowledge based authentication which meets the following requirements:

(1) principal must answer a quiz consisting of a minimum of five questions related to the principal's personal history or identity, formulated from public and proprietary data sources;

(2) each question must have a minimum of five possible answer choices;

(3) at least 80% of the questions must be answered correctly;

(4) all questions must be answered within two minutes;

(5) if the principal fails their first attempt, they may retake the quiz one time within 24 hours;

(6) during the retake, a minimum of 60% of the prior questions must be replaced; and

(7) if the principal fails their second attempt, they are not permitted to retry with the same online notary public for 24 hours.

(c) Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal.

(d) Credential analysis shall, at a minimum:

(1) use automated software processes to aid the online notary public in verifying the identity of a principal or any credible witness;

(2) ensure that the credential passes an authenticity test, consistent with sound commercial practices that:

(A) Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;

(B) Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;

(C) Use information held or published by the issuing source or authoritative source(s), as available, to confirm the validity of personal details and credential details; and

(D) Provide output of the authenticity test to the notary public.

(3) Enable the online notary public to visually compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.

(e) If the principal must exit the workflow, the principal must meet the criteria outlined in this section and must restart the identity proofing and credential analysis from the beginning.

§87.71. Online notarization system.

An online system used to perform online notarial acts by means of audio-video communication shall:

(1) provide for continuous, synchronous audio-visual feeds;

(2) provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak to each other simultaneously through live, real time transmission;

(3) provide sufficient captured image resolution for credential analysis to be performed in accordance with subchapter H of this chapter.

(4) include a means of authentication that reasonably ensures only the proper parties have access to the audio-video communication;

(5) provide some manner of ensuring that the electronic record that is presented for online notarization is the same record electronically signed by the principal;

(6) be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz, and the means and methods used to generate the credential analysis output; and

(7) provide reasonable security measures to prevent unauthorized access to:

(A) the live transmission of the audio-video communication;

(B) a recording of the audio-video communication;

(C) the verification methods and credentials used to verify the identity of the principal; and

(D) the electronic documents presented for electronic notarization.

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

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Lindsey Aston
General Counsel
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For further information, please call: (512) 463-5590

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

DIVISION 2. LICENSES

4 TAC §7.125

The Texas Department of Agriculture (the Department) proposes amendment to the Texas Administrative Code, Title 4, Part 1, Chapter 7, Subchapter H, Division 2, §7.125, concerning Examinations. The proposed amendment is offered to clarify the rule and reinstate the temporal limitation on individual exam scores as valid for only 12 months.

The Department has determined that due to a clerical omission, the temporal limitation on the validity of test scores for structural pest control service licensees, as prescribed in §7.125, was inadvertently removed during the rule change process. Changes to §7.125 were effective on January 9, 2018, and published in

the January 5, 2018, issue of the *Texas Register* (43 TexReg 41).

The proposed rule has been presented to the Structural Pest Control Advisory Committee (Committee) for review and feedback as required by Texas Occupations Code, §1951.104. The Committee's input has been taken into consideration and included in the proposal.

Philip Wright, Administrator for Agriculture and Consumer Protection, has determined for the first five year period the proposed amendment is in effect, there will be no fiscal impact on state or local government as a result of the proposal.

Mr. Wright has also determined that for each year of the first five years the proposed amendment is in effect, the public will benefit through increased consumer protection as affected and potential licensees who are tested annually for licensure will be required to maintain a thorough knowledge of current structural pest control program rules, laws and requirements. There will be no adverse fiscal impact on individuals, small or micro businesses as a result of the proposed rule change, as licensees are currently subject to a testing requirement to maintain licensure. There will be no adverse impact on rural communities.

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

(1) no new or current government or Department programs will be created or eliminated;

(2) no employee positions will be created, nor will any existing Department staff positions be eliminated; and

(3) there will not be an increase or decrease in future legislative appropriations to the Department.

Additionally, Mr. Wright has determined that for the first five years the proposed rule is in effect:

(1) there will be no increase or decrease in fees paid to the Department;

(2) there will be no new regulations created by the proposal;

(3) there will be no expansion of regulations, limitation or repeal of existing regulations;

(4) there will be no increase or decrease to the number of individuals subject to the proposal, as the amendment reinstates the previous requirement limiting the time validity of individuals' exam scores; and

(5) the proposal will positively affect the Texas economy by maintaining high standards for structural pest control applicators through changes that are consistent with the statutes and existing policy.

Comments on the proposed amendment may be submitted to Philip Wright, Administrator for Agriculture and Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to Philip.Wright@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under §1951.406 of the Occupations Code, which provides the Department with the authority to adopt rules relating to examination policy and administration for the Structural Pest Control Service program.

Chapter 1951 of the Texas Occupations Code is affected by this proposal.

§7.125. Examinations.

(a) (No change.)

(b) (No change.)

(c) (No change.)

(d) Examination standards and requirements.

(1) - (10) (No change.)

(11) Individual exam scores are valid for only 12 months.

(e) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2018.

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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

DIVISION 1. GENERAL PROVISIONS

16 TAC §309.8

The Texas Racing Commission proposes amendments to 16 TAC §309.8, Racetrack License Fees. The rule establishes the license fees charged to horse and greyhound racetracks. The amendments would extend the present fee structure, currently scheduled to end August 31, 2018, through February 28, 2019, after which Class 1 racetrack fees are reduced and fees for all other tracks are increased back to the amounts in effect in Fiscal Year 2017. Under this proposal, the base license fee for Class 1 tracks would decrease to $540,000 in March 2019, rather than $500,000 in September 2018 as provided by the current rule. Additionally, the per-day fee for additional race days at Class 1 tracks would apply to every day after 25 days, rather than 45 days as provided by the current rule.

Because the racetrack license fees would change mid-year under this proposal, the term "annual" is changed to "annualized" to reflect that fees are calculated on an annual basis and then divided into monthly or quarterly payments, as appropriate, for each half of the year. For example, for the first half of Fiscal Year 2019, the fee for a Class 1 track with 50 race dates would be calculated by adding the base fee of $714,650 to the number of

race dates over 20 times the cost per race day beyond the base ($6,313), or $714,650 + (30 x $6313), for a total annualized fee of $904,040, or $75,336.67/month from September 2018 through February 2019. For the second half of Fiscal Year 2019, the fee for the same track would be calculated by adding the base fee of $540,000 to the number of race dates over 25 times the cost per race day beyond the base ($3750), or $540,000 + (25 x $3750), for a total annualized fee of $633,750, or $52,812.50/month from March through August 2019.

FISCAL NOTE

STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect, there will be positive fiscal implications for local and state government as a result of enforcing the amended rule. Adoption of the amendments will allow the Commission to remain fiscally viable, continue in operation, and continue generating revenue for the state. Simulcasting in Texas generates over $2.5 million per year in general revenue for the State of Texas, and without the Commission's continued operations, that revenue would be lost. In addition, racetracks in Texas pay a variety of local taxes, including sales taxes, that would be lost without the Commission's continued operation.

PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect, the anticipated public benefit will be not only the generation of revenue for state and local government as described above, but additionally, the change will stabilize the agency's funding so that the Commission may continue regulating racing. Racing carries inherent risks to its participants, and the Commission mitigates those risks by, among other activities, conducting pre-race inspections of the race animals, detecting and preventing the use of prohibited drugs in race animals, and inspecting the facilities to ensure that they are safe for both the participants and the patrons. The probable economic cost to persons required to comply with the rule is, in the first year the amendments are in effect, the difference between the fees under the current rule and the fees under the rule as proposed, with only the Class 1 tracks' fees increasing under the rule as proposed (and the increase varying based on the number of race days each track elects); in years 2-5 of the first five years the amendments are in effect, the economic cost of these amendments is an additional base fee of $40,000 plus up to $18,750 in per-day fees to Class 1 tracks only.

GOVERNMENT GROWTH IMPACT

For each year of the first five years that the amended rule is in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; implementation of the rule would postpone the effective date of a change in fees and would require an increase in the amount that Class 1 tracks will be required to pay at a future date but does not require a substantial increase or decrease in the total amount of fees paid to the agency; the amendments do not create any new regulations; the amendments do not expand, limit, or repeal any existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule positively affects this state's economy by enabling all of the economic activity associated with pari-mutuel racing in Texas to continue.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES

These amendments would have no adverse economic effect on small or micro-businesses, local economy, or rural communities, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments. As described above, failure to adopt the amendments may have negative effects on employment conditions if the agency becomes insolvent.

The amendments will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by providing the revenue the agency requires to continue operations. If the agency does not have adequate funding to continue operations, there will no longer be an incentive to engage in the agricultural, breeding and training efforts that are directly related to Texas racing.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225, and so an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed rule will not affect private real property, and will not restrict, limit, or impose a burden an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Chief of Staff for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §5.01, which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of regulating, overseeing, and licensing live and simulcast racing at racetracks, and under §6.18, which authorizes the Commission to prescribe a reasonable annual fee to be paid by each racetrack licensee to pay the costs of administering and enforcing the Act.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§309.8. Racetrack License Fees.

(a) (No change.)

(b) Fees for The Period From September 1, 2018, Through February 28, 2019. [~~State Fiscal Year Beginning September 1, 2017.~~]

(1) Base [~~Annual~~] License Fee. A licensed racing association shall pay a [~~an annual~~] license fee in the following annualized amount:[~~. The annual license fee for each license type is as follows:~~]

(A) for a Class 1 racetrack, $714,650;

(B) for a Class 2 racetrack, $127,600;

(C) for a Class 3 or 4 racetrack, $35,725; and

(D) for a Greyhound racetrack, $204,175.

(2) Adjustment of Fees. Annualized [~~Annual~~] fees are calculated using a [~~projected~~] base of 68 days of live horse racing and 36 performances of live greyhound racing per fiscal year. To cover the additional regulatory cost in the event additional days or performances are requested by the associations the executive secretary may:

(A) recalculate a horse racetrack's annualized [~~annual~~] fee by adding $6,313 for each live day added beyond the base;

(B) recalculate a greyhound racetrack's annualized [~~annual~~] fee by adding $750 for each live performance added beyond the base; and

(C) review the original or amended race date request submitted by each association to establish race date baselines for specific associations if needed.

(3) Payment of Fee. Each association shall pay its license fee by remitting to the Commission 1/12 of its annualized fee on the first business day of each month. [~~Beginning on March 9, 2018, and on the first day of each remaining month of the 2018 fiscal year, each association shall pay its annual license fee by remitting to the Commission 1/6th of the fee remaining due as of March 5, 2018.~~]

(c) Unless the Commission Amends These Provisions, Fees for The Period Beginning March 1, 2019 [~~State Fiscal Years Beginning September 1, 2018, and Thereafter~~]:

(1) Base [~~Annual~~] License Fee. A licensed racing association shall pay a [~~an annual~~] license fee in the following annualized amount:[~~. The annual license fee for each license type is as follows:~~]

(A) for a Class 1 racetrack, $540,000 [~~500,000~~];

(B) for a Class 2 racetrack, $230,000;

(C) for a Class 3 or 4 racetrack, $70,000; and

(D) for a Greyhound racetrack, $360,000.

(2) Adjustment of Fees. Annualized [~~Annual~~] fees are calculated using a [~~projected~~] base of 83 [~~143~~] days of live horse racing and 270 performances of live greyhound racing per fiscal [~~calendar~~] year. To cover the additional regulatory cost in the event additional days or performances are requested by the associations the executive secretary may:

(A) recalculate a horse racetrack's annualized [~~annual~~] fee by adding $3,750 for each live day added beyond the base;

(B) recalculate a greyhound racetrack's annualized [~~annual~~] fee by adding $750 for each live performance added beyond the base; and

(C) review the original or amended race date request submitted by each association to establish race date baselines for specific associations if needed.

(3) Payment of Fee.

(A) For the period from March 1 through August 31, 2019:

(i) On the first business day of the month, an [~~An~~] association that is conducting live racing or simulcasting shall pay its [~~annual~~] license fee by remitting to the Commission 1/6 [~~1/12th~~] of the fee remaining due as of March 1, 2019 [~~on the first business day of each month~~].

(ii) [~~(B)~~] On the first business day of the fiscal quarter, an [~~An~~] association that is not conducting live racing or simulcasting shall pay its [~~annual~~] license fee by remitting to the Commission 1/2 of the fee remaining due as of March 1, 2019 [~~in four equal installments on September 1, December 1, March 1, and June 1 of each fiscal year~~].

(B) For the period beginning September 1, 2019:

(i) An association that is conducting live racing or simulcasting shall pay its license fee by remitting to the Commission 1/12 of the total fee on the first business day of each month.

(ii) An association that is not conducting live racing or simulcasting shall pay its license fee in four equal installments on September 1, December 1, March 1, and June 1 of each fiscal year.

(d) If the executive secretary determines that the total revenue from the [~~annual~~] fees exceeds the amount needed to pay those costs, the executive secretary may order a moratorium on all or part of the [~~annual~~] license fees remitted monthly by any or all of the associations. Before entering a moratorium order, the executive secretary shall develop a formula for providing the moratorium in an equitable manner among the associations. In developing the formula, the executive secretary shall consider the amount of excess revenue received by the Commission, the source of the revenue, the Commission's costs associated with regulating each association, the Commission's projected receipts for the next fiscal year, and the Commission's projected expenses during the next fiscal year.

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

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Devon Bijansky
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.5

The Texas Racing Commission proposes amendments to 16 TAC §311.5, License Categories and Fees. The rule establishes the license fees charged to occupational licensees. The amendments would waive the license fees, currently $25/year, for four license types: chaplain, chaplain's assistant, adoption program personnel, and test barn technician.

FISCAL NOTE

STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect, the anticipated fiscal impact of the amendments would be approximately $1000 as a result of losing $25 license fees from approximately 40 licensees among the four license types.

PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect, the anticipated public benefit will be easing the financial burden on three types of licensees whose roles at the racetracks are charitable in nature (chaplains, chaplain's assistants, and reducing barriers to entry for prospective test barn technicians, whose work is performed on behalf of the agency, although they are employed by the racetracks. There is no probable economic cost to persons required to comply with the rule as amended.

GOVERNMENT GROWTH IMPACT

For each year of the first five years that the amended rule is in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; implementation of the amendments does not require a substantial increase or decrease in the total amount of fees paid to the agency; the amendments do not create any new regulations; the amendments do not expand, limit, or repeal any existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the proposed amendments do not affect this state's economy.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES

These amendments would have no adverse economic effect on small or micro-businesses, local economy, or rural communities, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225, and so an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed rule will not affect private real property, and will not restrict, limit, or impose a burden an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Chief of Staff for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §5.01, which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of regulating, overseeing, and licensing live and simulcast racing at racetracks, and under §7.05, which requires the Commission to adopt a fee schedule for occupational licenses.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§311.5. License Categories and Fees.

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

(d) The fee for an occupational license is as follows:

Figure: 16 TAC §311.5(d)

[~~Figure: 16 TAC §311.5(d)~~]

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

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

TRD-201802717

Devon Bijansky

General Counsel

Texas Racing Commission

Earliest possible date of adoption: July 29, 2018

For further information, please call: (512) 833-6699

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SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.104

The Texas Racing Commission proposes amendments to 16 TAC §311.104, Trainers. The amendments would expand the list of those persons who cannot assume the responsibilities of a trainer who has been suspended. Currently, members of the suspended trainer's household and relatives within the first degree of consanguinity or affinity may not take over for a suspended trainer. These amendments would expand the prohibition to include any one who is related to the suspended trainer by consanguinity or affinity and anyone who has worked for the trainer within the last 12 months, with an exception for cases in which the executive secretary has waived the prohibition in writing.

FISCAL NOTE

STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect, the amendments would have no anticipated fiscal impact on state or local government.

PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect, the anticipated public benefit will be greater assurance that a suspended trainer is truly suspended and is not continuing to train horses under the name of an employee. There is no probable economic cost to persons required to comply with the rule as amended.

GOVERNMENT GROWTH IMPACT

For each year of the first five years that the amended rule is in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; implementation of the amendments does not require a substantial increase or decrease in the total amount of fees paid to the agency; the amendments do not create any new regulations; the amendments expand an existing regulation; the amendments increase the num-

ber of individuals subject to the rule's applicability; and the proposed amendments do not affect this state's economy.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES

These amendments would have no adverse economic effect on small or micro-businesses, local economy, or rural communities, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225, and so an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed rule will not affect private real property, and will not restrict, limit, or impose a burden an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Chief of Staff for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to regulate and supervise every race meeting in the state involving wagering on the result of greyhound or horse race and to make rules relating to horse racing.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§311.104. Trainers.

(a) - (h) (No change.)

(i) Suspended, Revoked or Ineligible Horse Trainers.

(1) Upon the suspension, revocation or denial of a trainer's license, the trainer shall notify each owner for whom he or she trains horses of the suspension, revocation or denial.

(2) Except as specifically permitted by the executive director in writing, a [~~A~~] person may not assume the responsibilities of a horse trainer who is ineligible to be issued a license or whose license is suspended or revoked if the person:

(A) is related to the trainer by [~~within the first degree of~~] consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code.

(B) is related to the spouse of the trainer by blood or by marriage; or

(C) has been an employee of the trainer within the previous year.

(3) A person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible horse trainer may not:

(A) receive any compensation regarding those horses from the suspended, revoked or ineligible trainer;

(B) pay any compensation regarding those horses to the suspended, revoked or ineligible trainer;

(C) solicit or accept a loan of anything of value from the suspended, revoked or ineligible trainer; or

(D) use the farm or individual name of the suspended, revoked or ineligible trainer when billing customers.

(4) A person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible trainer is directly responsible for all financial matters relating to the care, custody, or control of the horses.

(5) On request by the Commission, a suspended, revoked or ineligible trainer or a person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible trainer shall permit the Commission to examine all financial or business records to ensure compliance with this section.

(j) - (l) (No change.)

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

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

TRD-201802718
Devon Bijansky
General Counsel
Texas Racing Commission
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 833-6699

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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER B. ENTRIES, SCRATCHES, AND ALLOWANCES
DIVISION 3. ALLOWANCES AND PENALTIES

16 TAC §313.168

The Texas Racing Commission proposes amendments to 16 TAC §313.168, Scale of Weights for Age. The amendments would increase the weight to be carried by a quarter horse, paint horse, or Appaloosa horse in races by two to four pounds, depending on the age of the horse.

FISCAL NOTE

STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect, the amendments would have no anticipated fiscal impact on state or local government.

PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect, the anticipated public benefit will be increased rider and horse safety because jockeys will be able to maintain healthier weights while riding. There is no probable economic cost to persons required to comply with the rule as amended.

GOVERNMENT GROWTH IMPACT

For each year of the first five years that the amended rule is in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; implementation of the amendments does not require a substantial increase or decrease in the total amount of fees paid to the agency; the amendments do not create any new regulations; the amendments do not expand any existing regulations; the amendments do not increase the number of individuals subject to the rule's applicability; and the proposed amendments do not affect this state's economy.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES

These amendments would have no anticipated adverse economic effect on small or micro-businesses, local economy, or rural communities, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225, and so an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed rule will not affect private real property, and will not restrict, limit, or impose a burden an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Chief of Staff for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to regulate and supervise every race meeting in the state involving wagering on the result of greyhound or horse race and to make rules relating to horse racing.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§313.168. Scale of Weights for Age.

(a) (No change.)

(b) Except for a race in which the conditions expressly provide otherwise, the weight to be carried by a quarter horse, paint horse, or Appaloosa horse in a race during all months and for all distances shall be as follows:

(1) for two year olds, 124 [~~120~~] pounds;

(2) for three year olds, 125 [~~123~~] pounds; and

(3) for four year olds and older, 128 [~~126~~] pounds.

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

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

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Devon Bijansky
General Counsel
Texas Racing Commission
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.3

The Texas Racing Commission proposes amendments to 16 TAC §319.3, Medication Restricted. The amendments would ban clenbuterol at all times, eliminating the current threshold of 140 pg/mL as indicated on the permissible medications list. A horse found to have clenbuterol in its system would be placed on the Veterinarian's List for at least 60 days and would have to test negative to be removed from the list, with an exception for therapeutic use of clenbuterol if prescribed by a licensed veterinarian and the use is reported to the Commission within 24 hours of initiating treatment, at which time the horse is placed on the Veterinarian's List for at least 30 days and must test negative to be removed from the list.

FISCAL NOTE

STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect, the amendments would have no anticipated fiscal impact on state or local government.

PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect, the anticipated public benefit will be increased integrity in horse racing due to assurance that clenbuterol is not being misused in racehorses for its anabolic effect. There is no probable economic cost to persons required to comply with the rule as amended.

GOVERNMENT GROWTH IMPACT

For each year of the first five years that the amended rule is in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; implementation of the amendments does not require a substantial increase or decrease in the total amount of fees paid to the agency; the amendments do not create any new regulations; the amendments expand an existing regulation by eliminating one permissible therapeutic medication from racing; the amendments do not increase the number of individuals subject to the rule's applicability; and the proposed amendments do not affect this state's economy.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES

These amendments would have no anticipated adverse economic effect on small or micro-businesses, local economy, or rural communities, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225, and so an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed rule will not affect private real property, and will not restrict, limit, or impose a burden an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Chief of Staff for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to regulate and supervise every race meeting in the state involving wagering on the result of greyhound or horse race and to make rules relating to horse racing.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§319.3. Medication Restricted.

(a) Except as otherwise provided by this section, a horse or greyhound participating in a race may not carry in its body a prohibited drug, chemical, or other substance.

(b) Furosemide at or below the approved tolerance level in a horse that has been admitted to the furosemide program is permissible. The maximum permissible concentration [~~approved tolerance level~~] shall be published on the list of therapeutic drugs posted under subsection (c) of this section.

(c) Therapeutic [~~Levels of~~] drugs that are [~~which are therapeutic and~~] necessary for treatment of illness or injury in race animals are permissible, provided that:

(1) the therapeutic drug is on a written list of permissible levels of therapeutic medications that is approved by the executive secretary, maintained by the commission veterinarian, and posted in the commission veterinarians' office; and

(2) the [~~maximum permissible urine or blood~~] concentration of the drug does not exceed the maximum permissible concentration [~~published limit, if any,~~] on the written list of therapeutic drugs.

(d) Except as otherwise provided by this chapter, a person may not administer or cause to be administered to a horse or greyhound a prohibited drug, chemical, or other substance, by injection, [~~by~~] oral or topical administration, [~~by~~] rectal infusion or suppository, [~~by~~] nasogastric intubation, [~~or by~~] inhalation, or [~~and~~] any other means during the 24-hour period before the post time for the race in which the animal is entered.

(e) A positive finding by a chemist of a prohibited drug, chemical, or other substance in a test specimen of a horse or greyhound collected on the day [~~before or after the running~~] of a race, subject to the rules of the commission relating to split specimens, is prima facie evidence that the prohibited drug, chemical, or other substance was administered to the animal and was carried in the body of the animal while participating in a race.

(f) Except as provided in paragraph (2) of this subsection, clenbuterol is prohibited and shall not be administered to a horse participating in racing at any time.

(1) Any horse that is the subject of a finding by the stewards that a test specimen contains clenbuterol shall immediately be placed on the Veterinarian's List for not less than 60 days.

(A) In order to have a horse removed from the Veterinarian's List after being placed on the list under this subsection, the trainer must contact a commission veterinarian to schedule a time and test barn location where the horse must be presented after the sixtieth day in order for a commission veterinarian to obtain test specimens to be submitted to the official laboratory for testing.

(B) The cost of each test conducted under this section, including applicable shipping costs, shall be borne by the owner and must be paid in full at the time the specimens are shipped to the laboratory.

(C) The collected specimens must not have any detectable level of clenbuterol. If no detectable level of clenbuterol is present, the horse shall be removed from the Veterinarian's List. If a detectable level of clenbuterol is present, then the horse shall remain on the Veterinarian's List until such time that a test specimen reveals no detectable level of clenbuterol.

(D) A horse placed on the Veterinarian's List pursuant to this subsection may not be entered in a race until it has been removed from the list.

(2) A horse may only be administered clenbuterol if:

(A) the clenbuterol is prescribed by a licensed veterinarian;

(B) within 24 hours of initiating treatment, the trainer or owner has submitted to the Commission a form prescribed by the Commission and signed by the veterinarian, indicating:

(i) the name of the horse;

(ii) the name of the trainer;

(iii) the name of the veterinarian;

(iv) that the veterinarian has personally examined the horse and made an accurate clinical diagnosis justifying the clenbuterol prescription;

(v) the proper dosage and route of administration; and

(vi) the expected duration of treatment; and

(C) only FDA-approved clenbuterol that is labeled for use in the horse is prescribed and dispensed.

(3) A horse that has been administered clenbuterol under paragraph (2) of this subsection shall be placed on the Veterinarian's

List for a period ending not less than 30 days after the last administration of the drug as prescribed, subject to a negative clenbuterol test before being removed from the list.

(A) In order to have a horse removed from the Veterinarian's List after being placed on the list pursuant to paragraph (2) of this subsection, the trainer must contact a commission veterinarian to schedule a time and test barn location where the horse must be presented after the thirtieth day in order for a commission veterinarian to obtain test specimens to be submitted to the official laboratory for testing.

(B) The cost of each test conducted under this section, including applicable shipping costs, shall be borne by the owner and must be paid in full at the time the specimens are shipped to the laboratory.

(C) The collected specimens must not have any detectable level of clenbuterol. If no detectable level of clenbuterol is present, the horse shall be removed from the Veterinarian's List. If a detectable level of clenbuterol is present, then the horse shall remain on the Veterinarian's List until such time that a test specimen reveals no detectable level of clenbuterol.

(D) A horse placed on the Veterinarian's List pursuant to paragraph (2) of this subsection may not be entered in a race until it has been removed from the list.

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

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

TRD-201802719
Devon Bijansky
General Counsel
Texas Racing Commission
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

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 §97.1055

The Texas Education Agency (TEA) proposes an amendment to §97.1055, concerning accreditation status. The proposed amendment would modify the rule to provide clarifications to existing statutory provisions and reflect the recodification of Texas Education Code (TEC), Chapter 39, Subchapter E, into TEC, Chapter 39A.

Section 97.1055 defines the requirements a school district must meet each school year to receive the status of Accredited and states how the accreditation statuses of Accredited-Warned, Accredited-Probation, and Not Accredited-Revoked are determined.

The proposed amendment to §97.1055 would add new subsection (a)(7) to extend the commissioner's option to withhold the assignment of an accreditation status to an open-enrollment charter school subject to revocation or non-renewal/expiration to those that have voluntarily surrendered their charter contract in order to reduce duplicative actions on the part of the TEA.

New subsection (a)(10) would clarify the commissioner's authority to proceed with previously imposed sanctions due to a lowered accreditation status after the subsequent issuance of a new accreditation status. This addition would best fulfill the purposes of the accreditation system by ensuring that interventions and sanctions are continued so that districts do not earn their way out of the accreditation system only to fall back into the system in the next school year.

New subsection (d)(2) would be added to clarify the commissioner's options when a district might otherwise earn a Not Accredited-Revoked accreditation status. When the commissioner determines that good cause exists to maintain the district's current status, together with new or existing interventions or sanctions, the commissioner may abate the issuance of an accreditation status, issue another accreditation, appoint a board of managers to govern the district, and/or take other actions reasonably necessary to achieve the purposes of the accreditation system in lieu of revoking the district's accreditation. This would allow the commissioner greater flexibility to tailor interventions to meet the purposes of the accreditation system.

New subsection (d)(3) would be added to explain how accreditation statuses will be determined during school years in which a district is operated wholly or in part by an appointed board of managers. This change would allow the board of managers an opportunity to correct the district's academic, financial, programmatic, and governance deficiencies and would hold the board of managers responsible for the performance of the district that occurs during the period of appointment. This provision would best meet the purposes of the accreditation system by recognizing that the appointment of a board of managers is a fundamental change in the operation of the district and allowing time for that fundamental change to impact the academic, financial, and programmatic performance of the district.

In addition, the proposed amendment would update cross references to align with Senate Bill 1488, 85th Texas Legislature, Regular Session, 2017, which recodified TEC, Chapter 39, Subchapter E, into TEC, Chapter 39A.

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

FISCAL NOTE. A.J. Crabill, deputy commissioner for governance, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed amendment 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. Crabill has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment would be ensuring that rule language is based on current law and providing school districts with clarifications on the assignment of accreditation statuses and the applicability of sanctions and any future district ratings on subsequent accreditation status assignments. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, 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 29, 2018, and ends July 30, 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/. 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 request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 29, 2018.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.051, which requires the commissioner to determine accreditation statuses; and TEC, §39.052, which establishes the requirements for the commissioner to consider when determining accreditation statuses.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.051 and §39.052.

§97.1055. Accreditation Status.

(a) General provisions.

(1) Each year, the commissioner of education shall assign to each school district an accreditation status under Texas Education Code (TEC), §39.052(b) and (c). Each district shall be assigned a status defined as follows.

(A) Accredited. Accredited means the Texas Education Agency (TEA) recognizes the district as a public school of this state that:

(i) meets the standards determined by the commissioner under TEC, §39.052(b) and (c), and specified in §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations); and

(ii) is not currently assigned an accreditation status of Accredited-Warned or Accredited-Probation.

(B) Accredited-Warned. Accredited-Warned means the district exhibits deficiencies in performance, as specified in subsection (b) of this section, that, if not addressed, will lead to probation or revocation of its accreditation status.

(C) Accredited-Probation. Accredited-Probation means the district exhibits deficiencies in performance, as specified in subsection (c) of this section, that must be addressed to avoid revocation of its accreditation status.

(D) Not Accredited-Revoked. Not Accredited-Revoked means the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section.

(2) The commissioner shall assign the accreditation status, as defined by this section, based on the performance of each school district. This section shall be construed and applied to achieve the purposes of TEC, §39.051 and §39.052, which are specified in §97.1053(a) of this title (relating to Purpose).

(3) The commissioner shall revoke the accreditation status of a district that fails to meet the standards specified in this section. In the event of revocation, the purposes of the TEC, §39.051 and §39.052, are to:

(A) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers that the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section; and

(B) encourage other districts to improve their performance so as to retain their accreditation.

(4) Unless revised as a result of investigative activities by the commissioner as authorized under TEC, Chapter 39 or 39A, or other law, an accreditation status remains in effect until replaced by an accreditation status assigned for the next school year. An accreditation status shall be revised within the school year when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title.

(5) An accreditation status will be withheld pending completion of any appeal or review of an academic accountability rating, a financial accountability rating, or other determination by the commissioner, but only if such appeal or review is:

(A) specifically authorized by commissioner rule;

(B) timely requested under and in compliance with such rule; and

(C) applicable to the accreditation status under review.

(6) An accreditation status may be withheld pending completion of on-site or other investigative activities in order to achieve the purposes specified in §97.1053(a) of this title.

(7) The commissioner may withhold the assignment of an accreditation status to an open-enrollment charter school that is subject

to TEC, §12.115(c) or §12.1141(d), or has otherwise surrendered its charter.

(8) [~~7~~] An accreditation status may be raised or lowered based on the district's performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required under this chapter or other applicable law.

(9) [~~(8)~~] For purposes of determining multiple years of academically unacceptable or insufficient performance, the academic accountability ratings issued for the 2010-2011 school year and for the 2012-2013 school year are consecutive. An accreditation status assigned for the 2012-2013 school year shall be based on assigned academic accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section.

(10) If a lowered accreditation status is assigned and a sanction is imposed, the subsequent issuance of a new accreditation status does not affect the commissioner's authority to proceed with the previously imposed sanction.

(11) [~~(9)~~] Accreditation statuses are consecutive if they are not separated by an accreditation period in which the TEA assigned accreditation statuses to districts and charter schools generally. For example, if TEA does not assign accreditation statuses to districts and charter schools generally for the 2012-2013 school year, then the accreditation statuses issued for the 2011-2012 school year and for the 2013-2014 school year are consecutive.

(b) Determination of Accredited-Warned status.

(1) A district shall be assigned Accredited-Warned status if, beginning with its 2006 rating, the district is assigned:

(A) for two consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System);

(B) for two consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title (relating to Financial Accountability Ratings);

(C) for two consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for one school year, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title (relating to Public Education Information Management System (PEIMS) Data and Reporting Standards);

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title (relating to Performance-Based Monitoring Analysis System) exhibit serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(c) Determination of Accredited-Probation status.

(1) A district shall be assigned Accredited-Probation status if, beginning with its 2006 rating, the district is assigned:

(A) for three consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;

(B) for three consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title;

(C) for three consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for two consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(d) Determination of Not Accredited-Revoked status; Revocation of accreditation.

(1) The accreditation of a district shall be revoked if, beginning with its 2006 rating, the district is assigned:

(A) for four consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;

(B) for four consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title;

(C) for four consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for three consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding paragraph (1) of this subsection, the commissioner may abate the assignment of a Not Accredited-Revoked status, issue another accreditation status, or elect to appoint a board of managers to govern the district in lieu of revoking the district's accreditation if the commissioner determines that revocation of the district's accreditation is not reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(3) Notwithstanding this section, if the commissioner appoints a board of managers under paragraph (2) of this subsection or as a result of a special accreditation investigation, the commissioner shall assign the district accreditation statuses during the period of the appointment of the board of managers as follows.

(A) In the school year following the appointment of the board of managers, the commissioner shall assign the district an accreditation status of Accredited.

(B) In the school years following the issuance of the accreditation rating under subparagraph (A) of this paragraph, the commissioner shall assign the accreditation status as provided by subsections (a)-(d) of this section. However, the commissioner shall not consider any academic rating that was issued for a school year in which the district was operated, in whole or in part, by the suspended board of trustees. The commissioner shall also not consider any financial accountability rating that was issued based on financial data from a fiscal year in which the district was operated, in whole or in part, by the suspended board of trustees. Notwithstanding this provision, the commissioner may consider academic or financial ratings attributable to performance that occurred in a school year in which the district was operated, in whole or in part, by the suspended board of trustees if the commissioner, in his sole discretion, determines such consideration is necessary to achieve the purposes of TEC, §39.051 and §39.052.

(C) For any district subject to this paragraph, the commissioner may lower the district's accreditation rating to Not Accredited-Revoked at any time if the commissioner determines that the district is not making acceptable progress to correct its academic or financial performance and that closure and annexation is necessary to achieve the purposes of TEC, §39.051 and §39.052, unless the district has earned an Accredited status absent the application of subparagraph (A) or (B) of this paragraph.

(D) For purposes of this subsection, the period of appointment of the board of managers includes any school year in which any member of the board of managers serves, including the school year during which the appointment of the board of managers expires.

(4) [~~(2)~~] A district shall have its accreditation revoked if, notwithstanding its performance under paragraph (1) of this subsection, the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that require revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that require revocation of the district's accreditation.

(5) [~~(3)~~] Notwithstanding paragraph (2) of this subsection, a district's accreditation shall be revoked if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(6) [~~(4)~~] The commissioner's decision to revoke a district's accreditation may be reviewed under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings). If, after review, the decision is sustained, the commissioner shall appoint a management team or board of managers to bring to closure the district's operation of the public school.

(7) [~~(5)~~] Issuance of an accreditation status of Not Accredited-Revoked does not invalidate a diploma awarded, course credit earned, or grade promotion granted by a school district before the effective date of the annexation of the district.

(e) Legal compliance. In addition to the district's performance as measured by ratings under §97.1001 and §109.1001 of this title, the accreditation status of a district is determined by its compliance with the statutes and rules specified in TEC, §39.052(b)(2). Notwithstanding satisfactory or above satisfactory performance on other measures, a district's accreditation status may be assigned based on its legal compliance alone, to the extent the commissioner determines necessary. In making this determination, the commissioner:

(1) shall assign the accreditation status that is reasonably calculated to accomplish the applicable provisions specified in §97.1053(a) of this title;

(2) may impose, but is not required to impose, an accreditation sanction under this subchapter in addition to assigning a status under paragraph (1) of this subsection; and

(3) shall lower the status assigned and/or impose additional accreditation sanctions as necessary to achieve compliance with the statutes and rules specified in TEC, §39.052(b)(2).

(f) Required notification of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked status.

(1) A district assigned an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked shall notify the parents of students enrolled in the district and property owners in the district as specified by this subsection.

(2) The district's notice must contain information about the accreditation status, the implications of such status, and the steps the district is taking to address the areas of deficiency identified by the commissioner. The district's notice shall use the format and language determined by the commissioner.

(3) Notice under this subsection must:

(A) not later than 30 calendar days after the accreditation status is assigned, appear on the home page of the district's website, with a link to the notification required by paragraph (2) of this subsection, and remain until the district is assigned the Accredited status; and

(B) appear in a newspaper of general circulation, as defined in §97.1051 of this title (relating to Definitions), in the district for three consecutive days as follows:

(i) from Sunday through Tuesday of the second week following assignment of the status; or

(ii) if the newspaper is not published from Sunday through Tuesday, then for three consecutive issues of the newspaper beginning the second week following assignment of the status; or

(C) not later than 30 calendar days after the status is assigned, be sent by first class mail addressed individually to each parent of a student enrolled in the district and each property owner in the district; or

(D) not later than 30 calendar days after the status is assigned, be presented as a discussion item in a public meeting of the board of trustees conducted at a time and location that allows parents of students enrolled in the district and property owners in the district to attend and provide public comment.

(4) A district required to act under this subsection shall send the following to the TEA via certified mail, return receipt requested:

(A) the universal resource locator (URL) for the link required by paragraph (3)(A) of this subsection; and

(B) copies of the notice required by paragraph (3)(B) of this subsection showing dates of publication, or a paid invoice showing the notice content and its dates of publication; or

(C) copies of the notice required by paragraph (3)(C) of this subsection and copies of all mailing lists and postage receipts; or

(D) copies of the notice required by paragraph (3)(D) of this subsection and copies of the board of trustees meeting notice and minutes for the board meeting in which the notice was presented and publicly discussed.

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

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

TRD-201802714
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES AND PENALTIES

22 TAC §175.2

The Texas Medical Board (Board) proposes amendments to §175.2, concerning Registration and Renewal Fees.

The amendments increase the initial and subsequent permit for acupuncturists to account for biennial registration as opposed to annual.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have registration and renewal fees for acupuncturists that correspond with biennial registration and renewal rules and statutes.

Mr. Freshour has also determined that for the first five-year period the rule is in effect, there will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed amendments will be in effect, Mr. Freshour has determined the following:

(1) The proposed rule does not create or eliminate a government program.

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rule does not require an increase or decrease in fees paid to the agency.

(5) The proposed rule does not create a new regulation.

(6) The proposed rule does not expand, limit, or repeal an existing regulation.

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §205.103, which allows the medical board shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing Chapter 205.

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

§175.2. Registration and Renewal Fees.

The board shall charge the following fees to continue licenses and permits in effect:

(1) Physician Registration Permits:

(A) Initial biennial permit--$456.

(B) Subsequent biennial permit--$452.

(C) Additional biennial registration fee for office-based anesthesia--$210.

(D) In accordance with §554.006 of the Texas Occupations Code, for those physician license types that confer the authority to prescribe controlled substances and access the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the drug monitoring program. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(2) Physician Assistant Registration Permits:

(A) Initial annual permit--$272.50.

(B) Subsequent annual permit--$268.50.

(C) In accordance with §554.006 of the Texas Occupations Code, the Board shall charge an additional reasonable and necessary fee sufficient to cover the Board's responsible portion for costs related to the Texas Pharmacy Board's establishment and implementation of the Prescription Drug Monitoring Program described by §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code. The fee amount will be calculated in accordance with the Texas General Appropriations Act.

(3) Acupuncturists/Acudetox Specialists Registration Permits:

(A) Initial biennial [~~annual~~] permit for acupuncturist--$671 [~~337.50~~].

(B) Subsequent biennial [~~annual~~] permit for acupuncturist--$667 [~~333.50~~].

(C) Annual renewal for acudetox specialist certification--$87.50.

(4) Non-Certified Radiologic Technician permit annual renewal--$130.50.

(5) Non-Profit Health Organization biennial recertification--$1,125.

(6) Surgical Assistants registration permits:

(A) Initial biennial permit--$561.

(B) Subsequent biennial permit--$557.

(7) Certifying board evaluation renewal--$200.

(8) Perfusionists - License biennial renewal--$362.

(9) Respiratory Care Practitioners - Certificate renewal--$106.

(10) Medical Radiologic Technologist - General or limited certificate biennial renewal--$66.00.

(11) Non-Certified Radiologic Technician - Registry biennial renewal--56.00.

(12) Medical Physicists: License biennial renewal:

(A) First specialty--$260;

(B) Additional specialties--$50 each.

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

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

TRD-201802709
Stephen 'Brent' Carlton, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-7016

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1

The Texas State Board of Pharmacy proposes amendments to §291.1, concerning Pharmacy License Application. The amendments, if adopted, clarify that the applicant for a pharmacy license must provide any information requested on the application.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear instruction for applicants regarding the information which must be provided on a pharmacy license application. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§291.1 Pharmacy License Application

(a) To qualify for a pharmacy license, the applicant must submit an application which includes any information requested on the application.

[(a) To qualify for a pharmacy license, the applicant must submit an application including the following information:]

[(1) name and address of pharmacy;]

[(2) type of ownership;]

[(3) names, addresses, phone numbers, dates of birth, copies of social security cards or other official documents showing the social security numbers as approved by the board, and copies of current driver's licenses, state issued photo identification cards, or passports of all owners, or of all managing officers if the pharmacy is owned by a partnership or corporation;]

[(4) name and license number of the pharmacist-in-charge;]

[(5) name(s) and license number(s) of other pharmacists employed by the pharmacy;]

[(6) anticipated date of opening and hours of operation;]

[(7) copy of lease agreement or if the location of the pharmacy is owned by the applicant, a notarized statement certifying such location ownership;]

[(8) the signature of the pharmacist-in-charge;]

[(9) the notarized signature of the owner, or if the pharmacy is owned by a partnership or corporation, the notarized signature of an owner or managing officer;]

[(10) federal tax ID number of the owner;]

[(11) description of business services that will be offered;]

[(12) name and address of malpractice insurance carrier or statement that the business will be self-insured;]

[(13) documents from a primary wholesaler showing credit worthiness or other documents showing credit worthiness as approved by the board;]

[(14) official copy of the business formation documents filed with the Secretary of State;]

[(15) current certificate of Good Standing for the business structure from the state where the business structure is located; and]

[(16) any other information requested on the application.]

(b) The applicant may be required to meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs. The criminal history information may be required for each individual owner, or if the pharmacy is owned by a partnership or a closely held corporation for each managing officer.

(c) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a pharmacy license.

(d) For purpose of this section, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(e) Prior to the issuance of a license for a pharmacy located in Texas, the board shall conduct an on-site inspection of the pharmacy in the presence of the pharmacist-in-charge and owner or representative of the owner, to ensure that the pharmacist-in-charge and owner can meet the requirements of the Texas Pharmacy Act and Board Rules.

(f) If the applicant holds an active pharmacy license in Texas on the date of application for a new pharmacy license or for other good cause shown as specified by the board, the board may waive the pre-inspection as set forth in subsection (e) of this section.

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

Filed with the Office of the Secretary of State on June 15, 2018.

TRD-201802663
Allison Vordenbaumen Benz, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-8028

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22 TAC §291.3

The Texas State Board of Pharmacy proposes amendments to §291.3, concerning Required Notifications. The amendments, if adopted, add inspection requirements for sterile compounding

pharmacies (Class A-S, C-S and E-S) and nuclear pharmacies (Class B) when the pharmacy changes location.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure the public's safety by determining that a new location for a pharmacy that engages in sterile compounding or radiopharmaceutical preparation meets the Board's required operational standards before sterile compounding or radiopharmaceutical preparation activities may begin. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§291.3. Required Notifications.

(a) Change of Location.

(1) When a pharmacy changes location, the following is applicable:[.]

(A) A new completed pharmacy application containing the information outlined in §291.1 of this title (relating to Pharmacy License Application), must be filed with the board not later than 30 days before the date of the change of location of the pharmacy.

(B) The previously issued license must be returned to the board office.

(C) An amended license reflecting the new location of the pharmacy will be issued by the board; and

(D) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance of the amended license.

(2) At least 14 days prior to the change of location of a pharmacy that dispenses prescription drug orders, the pharmacist-in-charge shall post a sign in a conspicuous place indicating that the pharmacy is changing locations. Such sign shall be in the front of the prescription department and at all public entrance doors to the pharmacy and shall indicate the date the pharmacy is changing locations.

(3) Disasters, accidents, and emergencies which require the pharmacy to change location shall be immediately reported to the board. If a pharmacy changes location suddenly due to disasters, accidents, or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the change of location, the pharmacist-in-charge shall comply with the provisions of paragraph (2) of this subsection as far in advance of the change of location as allowed by the circumstances.

(4) When a Class A-S, C-S, or E-S pharmacy changes location, the pharmacy's classification will revert to a Class A, Class C, or Class E unless or until the Board or its designee has inspected the new location to ensure the pharmacy meets the requirements as specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(5) When a Class B pharmacy changes location, the Board shall inspect the pharmacy at the new location to ensure the pharmacy meets the requirements as specified in subchapter C of this title (relating to Nuclear Pharmacy (Class B)) prior to the pharmacy becoming operational.

(b) - (j) (No change.)

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

Filed with the Office of the Secretary of State on June 15, 2018.

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Allison Vordenbaumen Benz, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-8028

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22 TAC §291.19

The Texas State Board of Pharmacy proposes amendments to §291.19, concerning Administrative Actions as a Result of Compliance Inspection. The amendments, if adopted, update the response required to a written warning notice.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to

create a more efficient compliance inspection process. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§291.19. Administrative Actions as a Result of a Compliance Inspection.

As a result of a compliance inspection or compliance reinspection of a pharmacy wherein violations of the Texas Pharmacy Act, Controlled Substances Act, Dangerous Drug Act, Texas Food, Drug and Cosmetic Act, or rules adopted pursuant to such acts are [~~as~~] observed:

(1) an agent of the board may issue a written report of areas of non-compliance that need improvement;

(2) an agent of the board may issue a written warning notice listing specific violations to which the licensee shall respond in writing to the board by the date stated on the warning notice, indicating that the violations listed in the warning notice will be corrected [~~have been corrected~~];

(3) an agent of the board may recommend the institution of disciplinary action against a licensee if such agent determines that:

(A) previously cited violations are continuing to occur; or

(B) violations observed are of a nature that written notice of non-compliance or a written warning notice would not be in the best interest of the public; or

(4) an agent of the board, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety, or welfare, may recommend to the director of compliance, the institution of action by a district court in Travis County, Texas, to restrain or enjoin a licensee from continuing the violation, in addition to recommending the institution of disciplinary action against a licensee.

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

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Allison Vordenbaumen Benz, R.Ph.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: July 29, 2018

For further information, please call: (512) 305-8028

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22 TAC §291.29

The Texas State Board of Pharmacy proposes amendments to §291.29, concerning Professional Responsibility of Pharmacists. The amendments, if adopted, clarify the red flag factors to be considered in dispensing prescription drugs.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be increased awareness of the considerations to be taken into account when dispensing prescription drugs to prevent inappropriate dispensing due to fraudulent, forged, invalid, or medically inappropriate prescriptions. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§291.29. Professional Responsibility of Pharmacists.

(a) A pharmacist [~~Pharmacist~~] shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order dispensed. If the pharmacist questions the accuracy or authenticity of a prescription drug order, the pharmacist shall verify the order with the practitioner prior to dispensing.

(b) A pharmacist shall make every reasonable effort to ensure that any prescription drug order, regardless of the means of transmission, has been issued for a legitimate medical purpose by a practitioner in the course of medical practice. A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the order for such drug was issued without a valid pre-existing patient-practitioner relationship as defined by the Texas Medical Board in 22 Texas Administrative Code (TAC) §190.8 (relating to Violation Guidelines) or without a valid prescription drug order.

(1) A prescription drug order may not be dispensed or delivered by means of the Internet unless pursuant to a valid prescription that was issued for a legitimate medical purpose in the course of medical practice by a practitioner, or practitioner covering for another practitioner[~~, who has conducted at least one in-person medical evaluation of the patient~~].

(2) A prescription drug order may not be dispensed or delivered if the pharmacist has reason to suspect that the prescription drug order may have been authorized in the absence of a valid patient-practitioner relationship, or otherwise in violation of the practitioner's standard of practice to include that the practitioner:

(A) did not establish a diagnosis through the use of acceptable medical practices for the treatment of patient's condition;

(B) prescribed prescription drugs that were not necessary for the patient due to a lack of a valid medical need or the lack of a therapeutic purpose for the prescription drugs; or

(C) issued the prescriptions outside the usual course of medical practice.

(3) Notwithstanding the provisions of this subsection and as authorized by the Texas Medical Board in 22 TAC §190.8, a pharmacist may dispense a prescription when a physician has not established a professional relationship with a patient if the prescription is for medications for:

(A) sexually transmitted diseases for partners of the physician's established patient; or

(B) a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic.

(c) If a pharmacist has reasons to suspect that a prescription was authorized solely based on the results of a questionnaire and/or in the absence of a documented patient evaluation including a physical examination, the pharmacist shall ascertain if that practitioner's standard of practice allows that practitioner to authorize a prescription under such circumstances. Reasons to suspect that a prescription may have been authorized in the absence of a valid patient-practitioner relationship or in violation of the practitioner's standard of practice include:

(1) the number of prescriptions authorized on a daily basis by the practitioner;

(2) a disproportionate number of patients of the practitioner receive controlled substances;

(3) the manner in which the prescriptions are authorized by the practitioner or received by the pharmacy;

(4) the geographical distance between the practitioner and the patient or between the pharmacy and the patient;

(5) knowledge by the pharmacist that the prescription was issued solely based on answers to a questionnaire;

(6) knowledge by the pharmacist that the pharmacy he/she works for directly or indirectly participates in or is otherwise associated with an Internet site that markets prescription drugs to the public without requiring the patient to provide a valid prescription order from the patients practitioner; or

(7) knowledge by the pharmacist that the patient has exhibited doctor-shopping or pharmacy-shopping tendencies.

(d) A pharmacist shall ensure that prescription drug orders for the treatment of chronic pain have been issued in accordance with the guidelines set forth by the Texas Medical Board in 22 TAC §170.3 (relating to Guidelines), prior to dispensing or delivering such prescriptions.

(e) A prescription drug order may not be dispensed or delivered if issued by a practitioner practicing at a pain management clinic that is not in compliance with the rules of the Texas Medical Board in 22 TAC §§195.1 - 195.4 (relating to Pain Management Clinics). A prescription drug order from a practitioner practicing at a certified pain management clinic is not automatically valid and does not negate a pharmacist's responsibility to determine that the prescription is valid and has been issued for a legitimate or appropriate medical purpose.

(f) A pharmacist shall not dispense a prescription drug if the pharmacist knows or should know the prescription drug order is fraudulent or forged. A pharmacist shall make every reasonable effort to prevent inappropriate dispensing due to fraudulent, forged, invalid, or medically inappropriate prescriptions in violation of a pharmacist's corresponding responsibility. The following patterns (i.e., red flag factors) shall be considered, and the resolution (or rational for dispensing) documented to demonstrate that the pharmacist has exercised reasonable professional responsibility in evaluating the prescription(s):

(1) the pharmacy dispenses a reasonably discernible pattern of prescriptions for the same drugs for numerous persons, indicating a lack of individual drug therapy in prescriptions issued by the practitioner;

(2) the pharmacy operates with overall low prescription dispensing volume, maintaining relatively consistent 1:1 ratio of controlled substances to dangerous drugs and/or over-the-counter products dispensed as prescriptions;

(3) prescriptions are routinely for controlled substances commonly known to be abused drugs, including opioids, benzodiazepines, muscle relaxants, psychostimulants, and/or cough syrups containing codeine, or any combination of these drugs;

(4) prescriptions for controlled substances contain nonspecific or no diagnoses;

(5) prescriptions for controlled substances are commonly for the highest strength of the drug and/or for large quantities (e.g., monthly supply);

(6) dangerous drugs or over-the-counter products (e.g., multi-vitamins or laxatives) are consistently added to prescriptions for controlled substances;

(7) the practitioner's signature appears as inconsistent handwriting on prescription drug orders;

(8) upon contacting the practitioner's office, the pharmacist is unable to engage in comprehensive discussion with the actual prescribing practitioner; the practitioner fails to demonstrate concern regarding the pharmacist's apprehensions regarding the practitioner's prescribing practices; and/or the practitioner is unwilling to provide additional information, such as treatment goals and/or prognosis with prescribed drug therapy;

(9) the pharmacist relies solely on the practitioner's representation, or on the representation of the individual answering the phone at the number on the prescription, that a prescription is legitimate;

(10) the practitioner's clinic is not registered as a pain management clinic by the Texas Medical Board, despite routinely prescribing opioids, benzodiazepines, muscle relaxants, psychostimulants, and/or cough syrups containing codeine, or any combination of these drugs;

(11) the drug(s) or the quantity of the drug(s) prescribed are inconsistent with the practitioner's area of medical practice;

(12) the practitioner has been subject to disciplinary action by the licensing board, had his or her DEA registration revoked or surrendered, or has been subject to criminal action;

(13) the Texas Prescription Monitoring Program indicates the person presenting the prescriptions is obtaining similar drugs from multiple practitioners, and/or that the persons is being dispensed similar drugs at multiple pharmacies;

(14) the person presenting the prescription has an address that is a significant distance from the pharmacy and/or from the practitioner's office;

(15) multiple persons with the same address present prescriptions from the same practitioner;

(16) persons pay with cash or credit card more often than through insurance;

(17) persons presenting controlled substance prescriptions are doing so in such a manner that varies from the manner in which persons routinely seek pharmacy services (e.g., persons willing to wait in long lines to receive drugs; persons arriving in the same vehicle with prescriptions from same practitioner; one person seeking to pick up prescriptions for multiple others; drugs referenced by street names; non-medical abbreviations used; comments made about the drug's color; or persons seeking early refills);

(18) the pharmacy charges and persons are willing to pay significantly more for controlled substances relative to nearby pharmacies;

(19) the pharmacy routinely orders controlled substances from more than one drug supplier;

(20) the pharmacy has been discontinued by a drug supplier related to controlled substance orders;

(21) the pharmacy has a sporadic and inconsistent dispensing volume (including zero dispensing);

(22) the pharmacy does not maintain normal operational hours each week from Monday through Friday;

(23) the pharmacy employs or contracts security personnel during operational hours to prevent problems; and

(24) the pharmacy has been previously warned or disciplined by the Texas State Board of Pharmacy for inappropriate dispensing of controlled substances.

(g) While a resolution of any one individual prescription drug order with prescription red flag factors may be documented to demonstrate the pharmacist exercised professional responsibility in evaluating the prescription, multiple prescriptions demonstrating a pattern of the same or similar prescription red flag factors may indicate inappropriate dispensing in violation of a pharmacist's corresponding responsibility, as set forth in §562.056 of the Act.

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

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.31

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definitions. The amendments, if adopted, create a definition of electronic verification process and update the definition of prepackaging.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clear definitions. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§291.31. Definitions.

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

(1) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Chapter 562 of the Texas Pharmacy Act.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code, as amended.

(3) Advanced practice registered nurse--A registered nurse licensed by the Texas Board of Nursing to practice as an advanced practice registered nurse on the basis of completion of an advanced education program. The term includes nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with advanced nurse practitioner and advanced practice nurse.

(4) Automated checking device--A device that confirms that the correct drug and strength has been labeled with the correct label for the correct patient prior to delivery of the drug to the patient.

(5) Automated compounding or counting device--An automated device that compounds, measures, counts, and/or packages a specified quantity of dosage units of a designated drug product.

(6) Automated pharmacy dispensing systems--A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, dispensing, and distribution of medications, and which collects, controls, and maintains all transaction information. "Automated pharmacy dispensing systems" does not mean "Automated compounding or counting devices" or "Automated medication supply devices."

(7) Beyond use date--The date beyond which a product should not be used.

(8) Board--The Texas State Board of Pharmacy.

(9) Confidential record--Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(10) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(11) Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(12) Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(13) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(14) Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice registered nurse or physician assistant authorized by a practitioner to prescribe or order drugs or devices under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice registered nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(15) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(16) Dispensing error--An action committed by a pharmacist or other pharmacy personnel that causes the patient or patient's agent to take possession of a dispensed prescription drug and an individual subsequently discovers that the patient has received an incorrect drug product, which includes incorrect strength, incorrect dosage form, and/or incorrect directions for use.

(17) Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(18) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(19) Downtime--Period of time during which a data processing system is not operable.

(20) Drug regimen review--An evaluation of prescription drug orders and patient medication records for:

(A) known allergies;

(B) rational therapy-contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(21) Electronic prescription drug order--A prescription drug order that is generated on an electronic application and transmitted as an electronic data file.

(22) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(23) Electronic verification process--an electronic verification, bar code verification, weight verification, radio frequency identification (RFID), or similar electronic process or system that accurately verifies that medication has been properly dispensed and labeled by, or loaded into, an automated pharmacy dispensing system.

(24) [~~(23)~~] Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(25) [~~(24)~~] Hard copy--A physical document that is readable without the use of a special device.

(26) [~~(25)~~] Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(27) [~~(26)~~] Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(28) [~~(27)~~] Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(29) [~~(28)~~] New prescription drug order--A prescription drug order that has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year.

(30) [~~(29)~~] Original prescription--The:

(A) original written prescription drug order; or

(B) original verbal or electronic prescription drug order reduced to writing either manually or electronically by the pharmacist.

(31) [~~(30)~~] Part-time pharmacist--A pharmacist who works less than full-time.

(32) [~~(31)~~] Patient med-pak--A package prepared by a pharmacist for a specific patient comprised of a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(33) [~~(32)~~] Patient counseling--Communication by the pharmacist of information to the patient or patient's agent in order to improve therapy by ensuring proper use of drugs and devices.

(34) [~~(33)~~] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(35) [~~(34)~~] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(36) [~~(35)~~] Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(37) [~~(36)~~] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(38) [~~(37)~~] Physician assistant--A physician assistant recognized by the Texas Medical Board as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas Medical Board.

(39) [~~(38)~~] Practitioner--

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this Act;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this

state, a license holder in this state may legally prescribe a dangerous drug;

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order drugs or devices under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code) or, for the purpose of this subchapter, a pharmacist who practices in a hospital, hospital-based clinic, or an academic health care institution and a physician has delegated the authority to sign a prescription for a dangerous drug under §157.101, Occupations Code.

(40) [~~(39)~~] Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container, unit-dose packaging, or multi-compartment container for dispensing by a pharmacist to the ultimate consumer, including dispensing through the use of an automated pharmacy dispensing system or automated checking device.

(41) [~~(40)~~] Prescription department--The area of a pharmacy that contains prescription drugs.

(42) [~~(41)~~] Prescription drug--

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(43) [~~(42)~~] Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(44) [~~(43)~~] Prospective drug use review--A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(45) [~~(44)~~] State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(46) [~~(45)~~] Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(47) [~~(46)~~] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act.

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

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Allison Vordenbaumen Benz, R.Ph.
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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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22 TAC §291.32

The Texas State Board of Pharmacy proposes amendments to §291.32, concerning Personnel. The amendments, if adopted, allow pharmacy technicians and pharmacy technician trainees to load prepackaged containers previously verified by a pharmacist or manufacturer's unit of use packages into an automated dispensing system.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be more efficient use of developing technology. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§291.32. Personnel.

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

(d) Pharmacy Technicians and Pharmacy Technician Trainees.

(1) General.

(A) All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Special requirements for compounding. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(2) Duties.

(A) Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in subsection (c)(2) of this section.

(B) A pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(i) unless otherwise provided under §291.33 of this subchapter, a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees;

(ii) pharmacy technicians and pharmacy technician trainees are under the direct supervision of and responsible to a pharmacist; and

(iii) only pharmacy technicians and pharmacy technician trainees who have been properly trained on the use of an automated pharmacy dispensing system and can demonstrate comprehensive knowledge of the written policies and procedures for the operation of the system may be allowed access to the system.

(C) Pharmacy technicians and pharmacy technician trainees may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, as follows:

(i) initiating and receiving refill authorization requests;

(ii) entering prescription data into a data processing system;

(iii) taking a stock bottle from the shelf for a prescription;

(iv) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(v) affixing prescription labels and auxiliary labels to the prescription container;

(vi) reconstituting medications;

(vii) prepackaging and labeling prepackaged drugs;

(viii) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;

(ix) loading prepackaged containers previously verified by a pharmacist or manufacturer's unit of use packages into an automated dispensing system in accordance with §291.33(i)(2)(D)(III) of this subchapter;

(x) [~~(ix)~~] compounding non-sterile prescription drug orders; and

(xi) [~~(x)~~] compounding bulk non-sterile preparations.

(3) Ratio of on-site pharmacist to pharmacy technicians and pharmacy technician trainees.

(A) Except as provided in subparagraph (B) of this paragraph, the ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees may be 1:4, provided the pharmacist is on-site and at least one of the four is a pharmacy technician. The ratio of pharmacists to pharmacy technician trainees may not exceed 1:3.

(B) As specified in §568.006 of the Act, a Class A pharmacy may have a ratio of on-site pharmacists to pharmacy technicians/pharmacy technician trainees of 1:5 provided:

(i) the Class A pharmacy:

(I) dispenses no more than 20 different prescription drugs; and

(II) does not produce sterile preparations including intravenous or intramuscular drugs on-site; and

(ii) the following conditions are met:

(I) at least four are pharmacy technicians and not pharmacy technician trainees; and

(II) The pharmacy has written policies and procedures regarding the supervision of pharmacy technicians and pharmacy technician trainees, including requirements that the pharmacy technicians and pharmacy technician trainees included in a 1:5 ratio may be involved only in one process at a time. For example, a technician/trainee who is compounding non-sterile preparations or who is involved in the preparation of prescription drug orders may not also call physicians for authorization of refills.

(e) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician, or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(2) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(3) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(4) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

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

Filed with the Office of the Secretary of State on June 15, 2018.

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Allison Vordenbaumen Benz, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-8028

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22 TAC §291.33

The Texas State Board of Pharmacy proposes amendments to §291.33, concerning Operational Standards. The amendments, if adopted, update the requirements for use of automated storage and distribution devices by Class A pharmacies.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be more efficient use of developing technology in automated devices in pharmacies. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does not limit an existing regulation by allowing expanded usage of automated devices;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§291.33. Operational Standards.

(a) - (h) (No change.)

(i) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk or unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk or unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) manufacturer's expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record as specified in subparagraph (D) of this paragraph.

(2) Automated pharmacy dispensing systems.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the board upon request; and

(iii) the pharmacy will make the automated pharmacy dispensing system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Automated pharmacy dispensing systems may be stocked or loaded by a pharmacist or by a pharmacy technician or pharmacy technician trainee under the supervision of a pharmacist.

(C) [~~(B)~~] Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall operate according to a written program for quality assurance of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(D) [~~(C)~~] Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall:

(I) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(II) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(III) require [~~prior to use,~~] that a pharmacist checks, verifies, and documents that the correct medication and strength of bulk drugs, prepackaged containers, or manufacturer's unit of use packages was properly stocked, filled, and loaded in the automated pharmacy dispensing system prior to initiating the fill process; alternatively, an electronic verification system may be used for verification of manufacturer's unit of use packages or prepacked medication previously verified by a pharmacist [~~automated pharmacy dispensing system has been accurately filled each time the system is stocked~~];

(IV) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(V) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VI) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(E) [~~(D)~~] Recovery Plan. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime; and

(iii) procedures for the maintenance and testing of the written plan for recovery.

(F) [~~(E)~~] Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(c)(2)(D) of this title (relating to Personnel), a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(i) This final check shall be considered accomplished if:

(I) a check of the final product is conducted by a pharmacist after the automated pharmacy dispensing system has completed the prescription and prior to delivery to the patient; or

(II) the following checks are conducted [~~by a pharmacist~~]:

(-a-) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in subparagraph (C)(i)(III) of this paragraph; [~~and~~]

(-b-) if the automated pharmacy dispensing system contains manufacturer's unit of use packages or prepackaged medication previously verified by a pharmacist, an electronic verification system has confirmed that the medications have been accurately stocked as specified in clause (i)(III) of this subparagraph;

(-c-) [~~(-b-)~~] a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system; and[.]

(-d-) an electronic verification process is used to verify the proper prescription label has been affixed to the correct medication, prepackaged medication or manufacturer unit of use package for the correct patient.

(ii) If the final check is accomplished as specified in clause (i)(II) of this subparagraph, the following additional requirements must be met.

(I) The dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated pharmacy dispensing system until a completed, labeled prescription ready for delivery to the patient is produced.

(II) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in subparagraphs (A) and (B) of this paragraph.

(III) The automated pharmacy dispensing system documents and maintains:

(-a-) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in clause (i)(II) of this subparagraph; and

(-b-) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the dispensing process.

(IV) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every six months as specified in subparagraph (B) of this paragraph.

(3) Automated checking device.

(A) For the purpose of §291.32(c)(2)(D) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed:

(i) the drug used to fill the order is checked through the use of an automated checking device which verifies that the drug is labeled and packaged accurately; and

(ii) a pharmacist checks the accuracy of each original or new prescription drug order and is responsible for the final check of the order through the automated checking device.

(B) If the final check is accomplished as specified in subparagraph (A) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(i) of this paragraph; and

(II) the name(s) initials, or identification code(s) and specific activity(ies) of each pharmacist, or pharmacy technician, or pharmacy technician trainee who perform any other portion of the dispensing process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

(iv) The pharmacy establishes procedures to ensure that errors identified by the automated checking device may not be overridden by a pharmacy technician and must be reviewed and corrected by a pharmacist.

(4) Automated storage and distribution device. A pharmacy may use an automated storage and distribution device to deliver a previously verified prescription to a patient or patient's agent provided:

(A) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(B) the patient or patient's agent shall be counseled via a direct telephone link by a Texas licensed pharmacist who has access to the complete patient profile prior to the release of any new prescription released from the device;

(C) the patient or patient's agent may speak with a Texas licensed pharmacist via a direct telephone link for questions regarding their medications;

(D) the patient or patient's agent is given the option to use the system;

(E) a notice shall be posted at the automated storage and distribution device with the following information:

(i) the name and address of the pharmacy that verified the previously dispensed prescription; and

(ii) a statement that a pharmacist is available 24 hours a day, 7 days a week through the use of telephonic communication;

(F) drugs stored in the automated storage and distribution device are stored at proper temperatures;

(G) the automated storage and distribution device has been tested by the pharmacy and found to dispense prescriptions accurately;

(H) the automated storage and distribution device may be loaded with previously verified prescriptions only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and supervision of a pharmacist;

(I) the pharmacy will make the automated storage and distribution device and any testing records of the device available for inspection by the board;

(J) the automated storage and distribution device must have an adequate security system, including security camera(s), to prevent unauthorized access and to maintain patient confidentiality; and

(K) the automated storage and distribution device records a digital image of the individual accessing the device to pick-up a prescription and such record is maintained by the pharmacy for two years.

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

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Allison Vordenbaumen Benz, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-8028

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22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records. The amendments, if adopted, clarify the responsibility of a pharmacy owner as provided in §562.112 of the Texas Pharmacy Act.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure consistency between pharmacy laws and rules. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§291.34. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of Subchapter B of this chapter (relating to Community Pharmacy (Class A)) shall be:

(A) kept by the pharmacy at the pharmacy's licensed location and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedule II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III-V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing 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) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug unless the pharmacist complies with the requirements of §562.056 and §562.112 of the Act, and §291.29 of this title (relating to Professional Responsibility of Pharmacists).

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g., a practitioner taking calls for the patient's regular practitioner).

(D) The owner of a Class A pharmacy shall have responsibility for ensuring its agents and employees engage in appropriate decisions regarding dispensing of valid prescriptions as set forth in §562.112 of the Act.

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Dangerous drug prescription orders. Written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system that electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Controlled substance prescription orders. Prescription drug orders for Schedule II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(iii) Other provisions for a practitioner's signature.

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in clause (i) of this subparagraph.

(III) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense a prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug order for controlled substances in Schedule II issued by a practitioner in another state provided:

(-a-) the prescription is dispensed as specified in §315.9 of this title (relating to Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016);

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the twenty-first day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders issued by an advanced practice registered nurse, physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order that is:

(I) issued by an advanced practice registered nurse or physician assistant provided the advanced practice registered nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code; and

(II) for a dangerous drug and signed by a pharmacist under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice registered nurse or physician assistant authorized to issue a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice registered nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders.

(A) Dangerous drug prescription orders.

(i) An electronic prescription drug order for a dangerous drug may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

(II) through the use of a data communication device provided:

(-a-) the confidential prescription information is not altered during transmission; and

(-b-) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(B) Controlled substance prescription orders. A pharmacist may only dispense an electronic prescription drug order for a Schedule II, III, IV, or V controlled substance in compliance with the federal and state laws and the rules of the Drug Enforcement Administration outlined in Part 1300 of the Code of Federal Regulations and Texas Department of Public Safety.

(C) Prescriptions issued by a practitioner licensed in the Dominion of Canada or the United Mexican States. A pharmacist may not dispense an electronic prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Facsimile (faxed) prescription drug orders.

(A) A pharmacist may dispense a prescription drug order for a dangerous drug transmitted to the pharmacy by facsimile.

(B) A pharmacist may dispense a prescription drug order for a Schedule III-V controlled substance transmitted to the pharmacy by facsimile provided the prescription is manually signed by the practitioner and not electronically signed using a system that electronically replicates the practitioner's manual signature on the prescription drug order.

(C) A pharmacist may not dispense a facsimile prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order including clarifications to the order given to the pharmacist by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(C) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (10) of this subsection relating to accelerated refills.

(D) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III-V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(E) Original prescription records other than prescriptions for Schedule II controlled substances may be stored in a system that is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped and if for a controlled substance, the DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed numerically and if for a controlled substance:

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic; or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) date of issuance;

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code the:

(I) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) address and telephone number of the clinic where the prescription drug order was carried out or signed; and

(xii) if communicated orally or telephonically:

(I) the initials or identification code of the transcribing pharmacist; and

(II) the name of the prescriber or prescriber's agent communicating the prescription information.

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hardcopy prescription or in the pharmacy's data processing system:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the dispensing pharmacist;

(iii) initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) quantity dispensed, if different from the quantity prescribed;

(v) date of dispensing, if different from the date of issuance; and

(vi) brand name or manufacturer of the drug or biological product actually dispensed, if the drug was prescribed by generic name or interchangeable biological name or if a drug or interchangeable biological product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(8) Refills.

(A) General information.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized in paragraph (10) of this subsection relating to accelerated refills.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented as specified in subsection (l) of this section.

(B) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(C) Refills of prescription drug orders for Schedules III-V controlled substances.

(i) Prescription drug orders for Schedules III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, which ever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six month shave expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(D) Pharmacist unable to contact prescribing practitioner. If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(E) Natural or manmade disasters. If a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(F) Auto-Refill Programs. A pharmacy may use a program that automatically refills prescriptions that have existing refills available in order to improve patient compliance with and adherence to prescribed medication therapy. The following is applicable in order to enroll patients into an auto-refill program.

(i) Notice of the availability of an auto-refill program shall be given to the patient or patient's agent, and the patient or patient's agent must affirmatively indicate that they wish to enroll in such a program and the pharmacy shall document such indication.

(ii) The patients or patient's agent shall have the option to withdraw from such a program at any time.

(iii) Auto-refill programs may be used for refills of dangerous drugs, and schedule IV and V controlled substances. Schedule II and III controlled substances may not be dispensed by an auto-refill program.

(iv) As is required for all prescriptions, a drug regimen review shall be completed on all prescriptions filled as a result of the auto-refill program. Special attention shall be noted for drug regimen review warnings of duplication of therapy and all such conflicts shall be resolved with the prescribing practitioner prior to refilling the prescription.

(9) Records Relating to Dispensing Errors. If a dispensing error occurs, the following is applicable.

(A) Original prescription drug orders:

(i) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(ii) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(B) Prescription drug order records maintained in a data processing system:

(i) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(ii) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(iii) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be either voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed, or the data processing system must be capable of maintaining an audit trail showing any changes made to the data in the system.

(10) Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months that is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such lists hall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained on-line. A patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this subsection shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, that indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III-V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill as specified in subsection (l) of this section.

(4) Each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual record keeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system that can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(H) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout that contains the same information required on the daily printout as specified in paragraph(2)(C) of this subsection. The information on this hard copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription 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 that 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.

(E) 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.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard copy printout of all original prescriptions dispensed and refilled. This hard copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name; and the supervising physician's name if the prescription was issued by an advanced practice registered nurse, physician assistant or pharmacist;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via computer display, the following shall also be included on the hard copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) any changes made to a record of dispensing.

(D) The daily hard copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of non-controlled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard copy printout shall be available within 72 hours with a certification by the individual providing the printout, that states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records and responsible that such data processing system can produce the records outlined in this section and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) 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.

(J) The data processing system shall provide on-line retrieval (via computer display or hard copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy that uses a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard copy prescription drug order;

(B) on the daily hard copy printout; or

(C) via the computer display.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(1) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile directly by a pharmacist to another pharmacist; by a pharmacist to a pharmacist-intern; or by a pharmacist-intern to another pharmacist.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall ensure the following occurs:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system;

(B) record the name, address, if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of previous refills;

(iii) name, address, and if a controlled substance, the DEA registration number of the transferring pharmacy;

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, name, address and DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

(6) The individual receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the prescription or the prescription record indicates the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions) and including the following information;

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining and if a controlled substance, date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions) and the following:

(i) date of original dispensing;

(ii) number of refills remaining and if a controlled substance, the prescription number(s), date(s) and location(s) of previous refills;

(iii) name, address, and if for a controlled substance, the DEA registration number;

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient

or a pharmacist, and the prescription may be read to a pharmacist by telephone.

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(C) If the data processing system does not have the capacity to store all the information as specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order.

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred.

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(i) The original prescription is voided and the pharmacies' data processing systems shall store all the information as specified in paragraphs (5) and (6) of this subsection.

(ii) Pharmacies not owned by the same entity may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records.

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be completed within four business hours of the request.

(10) When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the compounded preparation including the formula unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(11) The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this subsection is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) 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 and 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 that 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 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.

(i) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes that will identify each pharmacist, pharmacy technician, and pharmacy technician trainee, who is involved in the dispensing process, in the pharmacy's data processing system, (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not 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) that has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS) the original signed order and all linked records for that order;

(3) a 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 copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) the 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 copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA, Department of Public Safety, and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(j) 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 that 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.

(k) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity that may legally own and maintain prescription drug records.

(l) Documentation of consultation. When a pharmacist consults a prescriber as described in this section, the pharmacist shall document on the hard copy or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information:

(1) date the prescriber was consulted;

(2) name of the person communicating the prescriber's instructions;

(3) any applicable information pertaining to the consultation; and

(4) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation if the information is recorded on the hard copy prescription.

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

Filed with the Office of the Secretary of State on June 15, 2018.

TRD-201802672
Allison Vordenbaumen Benz, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-8028

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74

The Texas State Board of Pharmacy proposes amendments to §291.74, concerning Operational Standards. The amendments, if adopted, update the requirements for drug use review as authorized by §562.1011(i) of the Texas Pharmacy Act.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure drug utilization reviews are conducted by pharmacists for medication drug orders in Class C pharmacies. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule both limits and expands an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The Board is unable to determine whether the proposed rule will positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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 §562.1011 as authorizing the agency to adopt rules for prospective and retrospective drug use review for new medication orders.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.74. Operational Standards.

(a) Licensing requirements.

(1) A Class C pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class C pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class C pharmacy which changes location and/or name shall notify the board of the change as specified in §291.3 of this title.

(4) A Class C pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change following the procedures in §291.3 of this title.

(5) A Class C pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(6) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(7) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(8) A Class C pharmacy, licensed under the Act, §560.051(a)(3), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1) (Community Pharmacy (Class A)) or the Act, §560.051(a)(2) (Nuclear Pharmacy (Class B)), is not required to secure a license for the such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §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), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class C pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations).

(10) Class C pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy.

(11) A Class C pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) A Class C pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(13) A Class C pharmacy with an ongoing clinical pharmacy program that proposes to allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist shall make application to the board as follows.

(A) The pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:

(i) name, address, and pharmacy license number;

(ii) name and license number of the pharmacist-in-charge;

(iii) name and registration numbers of the pharmacy technicians;

(iv) anticipated date the pharmacy plans to begin allowing a pharmacy technician to verify the accuracy of work performed by another pharmacy technician;

(v) documentation that the pharmacy has an ongoing clinical pharmacy program; and

(vi) any other information specified on the application.

(B) The pharmacy may not allow a pharmacy technician to check the work of another pharmacy technician until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(C) Every two years, in connection with the application for renewal of the pharmacy license, the pharmacy shall provide updated documentation that the pharmacy continues to have an ongoing clinical pharmacy program as specified in subparagraph (A)(v) of this paragraph.

(14) A rural hospital that wishes to allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title (relating to Personnel), shall make application to the board as follows.

(A) Prior to allowing a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title, the pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:

(i) name, address, and pharmacy license number;

(ii) name and license number of the pharmacist-in-charge;

(iii) name and registration number of the pharmacy technicians;

(iv) proposed date the pharmacy wishes to start allowing pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title;

(v) documentation that the hospital is a rural hospital with 75 or fewer beds and that the rural hospital is either:

(I) located in a county with a population of 50,000 or less as defined by the United States Census Bureau in the most recent U.S. census; or

(II) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital; and

(vi) any other information specified on the application.

(B) A rural hospital may not allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(C) Every two years in conjunction with the application for renewal of the pharmacy license, the pharmacist-in-charge shall update the application for pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title.

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) The institutional pharmacy shall be properly lighted and ventilated.

(E) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and/or freezer shall be maintained within a range compatible with the proper storage of drugs.

(F) If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) The institutional pharmacy shall store antiseptics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The institutional pharmacy shall be enclosed and capable of being locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) Equipment and supplies. Institutional pharmacies distributing medication orders shall have the following equipment:

(1) data processing system including a printer or comparable equipment; and

(2) refrigerator and/or freezer and a system or device (e.g., thermometer) to monitor the temperature to ensure that proper storage requirements are met.

(d) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and regulations; and

(D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text;

(3) a current or updated reference on injectable drug products;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal.

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph.

(iv) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section after a reasonable interval, but in no event may such interval exceed seven days.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable.

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days.

(3) Rural hospitals. In rural hospitals when a pharmacy technician performs the duties listed in §291.73(e)(2)(D) of this title, the following is applicable:

(A) the pharmacy technician shall make a record of all drugs distributed from the pharmacy. The record shall be maintained in the pharmacy for two years and contain the following information:

(i) name of patient or location where floor stock is distributed;

(ii) name of device or drug, strength, and dosage form;

(iii) dose prescribed or ordered;

(iv) quantity distributed;

(v) time and date of the distribution; and

(vi) signature (first initial and last name or full signature) or electronic signature of nurse or practitioner that verified the actions of the pharmacy technician.

(B) The original or direct copy of the medication order may substitute for the record specified in subparagraph (A) of this paragraph, provided the medication order meets all the requirements of subparagraph (A) of this paragraph.

(C) The pharmacist shall:

(i) verify and document the verification of all distributions made from the pharmacy in the absence of a pharmacist as soon as practical, but in no event more than seven (7) days from the time of such distribution;

(ii) perform a drug regimen review for all medication orders as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than seven (7) days from the time of such distribution and document such verification including any discrepancies noted by the pharmacist. [~~A prospective drug regimen review is not required when a delay in administration of the drug would harm the patient in an urgent or emergency situation, including sudden changes in a patient's clinical status~~];

(iii) review any discrepancy noted by the pharmacist with the pharmacy technician(s) and make any change in procedures or processes necessary to prevent future problems; and

(iv) report any adverse events that have a potential for harm to a patient to the appropriate committee of the hospital that reviews adverse events.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(D) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility. For the purpose of this section, a formulary is a compilation of pharmaceuticals that reflects the current clinical judgment of a facility's medical staff.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(C) A practitioner may grant approval for pharmacists at the facility to interchange, in accordance with the facility's formulary, for the prescribed drugs on the practitioner's medication orders provided:

(i) the pharmacy and therapeutics committee has developed a formulary;

(ii) the formulary has been approved by the medical staff committee of the facility;

(iii) there is a reasonable method for the practitioner to override any interchange; and

(iv) the practitioner authorizes pharmacists in the facility to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(3) Prepackaging of drugs.

(A) Distribution within a facility.

(i) Drugs may be prepackaged in quantities suitable for internal distribution by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Distribution to other Class C (Institutional) pharmacies under common ownership.

(i) Drugs may be prepackaged in quantities suitable for distribution to other Class C (Institutional) pharmacies under common ownership by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature;

(IV) quantity of the drug, if the quantity is greater than one; and

(V) name of the facility responsible for prepackaging the drug.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker;

(X) name, initials, or electronic signature of the responsible pharmacist; and

(XI) name of the facility receiving the prepackaged drug.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(v) The pharmacy shall have written procedure for the recall of any drug prepackaged for another Class C Pharmacy under common ownership. The recall procedures shall require:

(I) notification to the pharmacy to which the prepackaged drug was distributed;

(II) quarantine of the product if there is a suspicion of harm to a patient;

(III) a mandatory recall if there is confirmed or probable harm to a patient; and

(IV) notification to the board if a mandatory recall is instituted.

(4) Sterile preparations prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location, if not immediately administered;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (2)(C) of this subsection.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Pharmacy technicians and pharmacy technician trainees may not receive verbal medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) pharmaceutical care services;

(II) handling, storage and disposal of cytotoxic drugs and waste;

(III) disposal of unusable drugs and supplies;

(IV) security;

(V) equipment;

(VI) sanitation;

(VII) reference materials;

(VIII) drug selection and procurement;

(IX) drug storage;

(X) controlled substances;

(XI) investigational drugs, including the obtaining of protocols from the principal investigator;

(XII) prepackaging and manufacturing;

(XIII) stop orders;

(XIV) reporting of medication errors, adverse drug reactions/events, and drug product defects;

(XV) physician orders;

(XVI) floor stocks;

(XVII) drugs brought into the facility;

(XVIII) furlough medications;

(XIX) self-administration;

(XX) emergency drug supply;

(XXI) formulary;

(XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;

(XXIII) control of drug samples;

(XXIV) outdated and other unusable drugs;

(XXV) routine distribution of patient medication;

(XXVI) preparation and distribution of sterile preparations;

(XXVII) handling of medication orders when a pharmacist is not on duty;

(XXVIII) use of automated compounding or counting devices;

(XXIX) use of data processing and direct imaging systems;

(XXX) drug administration to include infusion devices and drug delivery systems;

(XXXI) drug labeling;

(XXXII) recordkeeping;

(XXXIII) quality assurance/quality control;

(XXXIV) duties and education and training of professional and nonprofessional staff;

(XXXV) procedures for a pharmacy technician to verify the accuracy of work performed by another pharmacy technician, if applicable;

(XXXVI) operation of the pharmacy when a pharmacist in not on-site; and

(XXXVII) emergency preparedness plan, to include continuity of patient therapy and public safety.

(6) Discharge Prescriptions. Discharge prescriptions must be dispensed and labeled in accordance with §291.33 of this title (relating to Operational Standards) except that certain medications packaged in unit-of-use containers, such as metered-dose inhalers, insulin pens, topical creams or ointments, or ophthalmic or otic preparation that are administered to the patient during the time the patient was a patient in the hospital, may be provided to the patient upon discharge provided the pharmacy receives a discharge order and the product bears a label containing the following information:

(A) name of the patient;

(B) name and strength of the medication;

(C) name of the prescribing or attending practitioner;

(D) directions for use;

(E) duration of therapy (if applicable); and

(F) name and telephone number of the pharmacy.

(g) Pharmaceutical care services.

(1) The pharmacist-in-charge shall assure that at least the following pharmaceutical care services are provided to patients of the facility.

(A) Drug utilization review. A systematic ongoing process of drug utilization review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(B) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate medication orders and patient medication records for:

(I) known allergies;

(II) rational therapy--contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions;

(X) proper utilization, including overutilization or underutilization; and

(XI) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(ii) The drug regimen review shall be conducted on a prospective basis when a pharmacist is on duty, except for an emergency order, and on a retrospective basis as specified in subsection (e)(1) of this section when a pharmacist is not on duty. [~~A prospective drug regimen review is not required when a delay in administration of the drug would harm the patient in an urgent or emergency situation, including sudden changes in a patient's clinical status~~].

(iii) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(iv) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(C) Education. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies that assure that:

(i) the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use; and

(ii) health care providers are provided with patient specific drug information.

(D) Patient monitoring. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies to ensure that the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider.

(2) Other pharmaceutical care services which may be provided by pharmacists in the facility include, but are not limited to, the following:

(A) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(B) administering immunizations and vaccinations under written protocol of a physician;

(C) managing patient compliance programs;

(D) providing preventative health care services; and

(E) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(h) Emergency rooms.

(1) During the times a pharmacist is on duty in the facility any prescription drugs supplied to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty in the facility, the following is applicable for supplying prescription drugs to be taken home by the patient for self-administration from the emergency room. If the patient has been admitted to the emergency room and assessed by a practitioner at the hospital, the following procedures shall be observed in supplying prescription drugs from the emergency room.

(A) Dangerous drugs and/or controlled substances may only be supplied in accordance with the system of control and accountability for dangerous drugs and/or controlled substances administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(B) Only dangerous drugs and/or controlled substances listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs and/or con-

trolled substances of the nature and type to meet the immediate needs of emergency room patients.

(C) Dangerous drugs and/or controlled substances may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including necessary auxiliary labels) by the institutional pharmacy.

(D) At the time of delivery of the dangerous drugs and/or controlled substances, the practitioner or licensed nurse under the supervision of a practitioner shall appropriately complete the label with at least the following information:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(vii) quantity supplied; and

(viii) unique identification number.

(E) The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient and explain the correct use of the drug.

(F) A perpetual record of dangerous drugs and/or controlled substances supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(v) quantity supplied; and

(vi) unique identification number.

(G) The pharmacist-in-charge, or staff pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(i) Radiology departments.

(1) During the times a pharmacist is on duty, any prescription drugs dispensed to an outpatient, including radiology department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty, the following procedures shall be observed in supplying prescription drugs from the radiology department.

(A) Prescription drugs may only be supplied to patients who have been scheduled for an x-ray examination at the facility.

(B) Prescription drugs may only be supplied in accordance with the system of control and accountability for prescription drugs administered or supplied from the radiology department and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only prescription drugs listed on the radiology drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's radiology committee (or like group or persons responsible for policy in that department) and shall consist of drugs for the preparation of a patient for a radiological procedure.

(D) Prescription drugs may only be supplied in prepackaged quantities in suitable containers and prelabeled by the institutional pharmacy with the following information:

(i) name and address of the facility;

(ii) directions for use;

(iii) name and strength of the prescription drug--if generic name, the name of the manufacturer or distributor of the prescription drug;

(iv) quantity;

(v) facility's lot number and expiration date; and

(vi) appropriate ancillary label(s).

(E) At the time of delivery of the prescription drug, the practitioner or practitioner's agent shall complete the label with the following information:

(i) date supplied;

(ii) name of physician;

(iii) name of patient; and

(iv) unique identification number.

(F) The practitioner or practitioner's agent shall give the appropriately labeled, prepackaged prescription drug to the patient.

(G) A perpetual record of prescription drugs supplied from the radiology department shall be maintained in the radiology department. Such records shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the prescription drug; or if no brand name, then the generic name, strength, dosage form, and the name of the manufacturer or distributor of the prescription drug;

(v) quantity supplied; and

(vi) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(j) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated medication supply systems.

(A) Authority to use automated medication supply systems. A pharmacy may use an automated medication supply system to fill medication orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated medication supply system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated medication supply system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated medication supply system to fill medication orders shall operate according to a written program for quality assurance of the automated medication supply system which:

(i) requires continuous monitoring of the automated medication supply system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated medication supply system is used to store or distribute medications for administration pursuant to medication orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated medication supply system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review and approval of each original or new medication order prior to withdrawal from the automated medication supply system:

(-a-) before the order is filled when a pharmacist is on duty except for an emergency order;

(-b-) retrospectively within 72 hours in a facility with a full-time pharmacist when a pharmacist is not on duty at the time the order is made; or

(-c-) retrospectively within 7 days in a facility with a part-time or consultant pharmacist when a pharmacist is not on duty at the time the order is made;

(III) provide for access to the automated medication supply system for stocking and retrieval of medications which is limited to licensed healthcare professionals, pharmacy technicians, or pharmacy technician trainees acting under the supervision of a pharmacist;

(IV) provide that a pharmacist is responsible for the accuracy of the restocking of the system. The actual restocking may be performed by a pharmacy technician or pharmacy technician trainee;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated medication supply system;

(VI) require a prospective or retrospective drug regimen review is conducted as specified in subsection (g) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated medication supply system.

(ii) A pharmacy which uses an automated medication supply system to fill medication orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may restock an automated medication supply system located outside of the pharmacy department with prescription drugs provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system except as specified in §291.73(e)(2)(C)(ii) of this title; or

(ii) all of the following occur:

(I) the prescription drugs to restock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(II) either:

(-a-) the drugs are in tamper evident product packaging, packaged by an FDA registered repackager or manufacture, that is shipped to the pharmacy; or

(-b-) if any manipulation of the product occurs in the pharmacy prior to restocking, such as repackaging or extemporaneous compounding, the product must be checked by a pharmacist; and

(III) quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) Recovery Plan. A pharmacy which uses an automated medication supply system to store or distribute medications for

administration pursuant to medication orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated medication supply system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated medication supply system is experiencing downtime;

(ii) procedures for response when an automated medication supply system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board and other appropriate agencies whenever an automated medication supply system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Verification of medication orders prepared by the pharmacy department through the use of an automated medication supply system. A pharmacist must check drugs prepared pursuant to medication orders to ensure that the drug is prepared for distribution accurately as prescribed. This paragraph does not apply to automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department.

(A) This check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed preparation of the medication order and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated medication supply system contains unlabeled stock drugs, a pharmacist verifies that those drugs have been accurately stocked; and

(II) a pharmacist checks the accuracy of the data entry of each original or new medication order entered into the automated medication supply system before the order is filled.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The medication order preparation process must be fully automated from the time the pharmacist releases the medication order to the automated system until a completed medication order, ready for delivery to the patient, is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated medication supply system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated medication supply system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after a drug is prepared for distribution but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) The final check of a drug prepared pursuant to a medication order shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new medication order.

(ii) the medication order is prepared, labeled, and made ready for delivery to the patient in compliance with Class C (Institutional) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the medication order has been prepared safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

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

Filed with the Office of the Secretary of State on June 15, 2018.

TRD-201802673
Allison Vordenbaumen Benz, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-8028

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy proposes amendments to §291.133, concerning Pharmacies Compounding Sterile Preparations. The amendments, if adopted, update the media fill and aseptic procedures test requirements for all sterile compounding personnel in Class A-S, Class B, Class C-S and Class E-S pharmacies; clarify the testing requirements for supervisory pharmacists working in multiple pharmacies under common ownership; clarify the environmental testing certification procedures; and correct grammatical and punctuation errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clarification of media fill and aseptic procedures testing and environmental testing certification requirements for sterile compounding personnel and pharmacies, and providing grammatically correct regulations. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendments will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §§551.002, 554.051, and 562.1011 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.

§291.133. Pharmacies Compounding Sterile Preparations.

(a) Purpose. Pharmacies compounding sterile preparations, prepackaging pharmaceutical products, and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A-S, Class B, Class C-S, and Class E-S pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded sterile preparation in Class A-S, Class B, Class C-S, and Class E-S pharmacies to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded sterile preparations by a Class A-S pharmacy for a Class C-S pharmacy; and

(4) compounding of sterile preparations by a Class C-S pharmacy and the distribution of the compounded preparations to other Class C or Class C-S pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) Classification Air Cleanliness (ISO 14644-1). For example:

(A) ISO Class 5 (formerly Class 100) is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100 particles 0.5 microns in diameter per cubic foot of air);

(B) ISO Class 7 (formerly Class 10,000) is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 10,000 particles 0.5 microns in diameter per cubic foot of air); and

(C) ISO Class 8 (formerly Class 100,000) is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100,000 particles 0.5 microns in diameter per cubic foot of air).

(3) Ancillary supplies--Supplies necessary for the preparation and administration of compounded sterile preparations.

(4) Ante-area--An ISO Class 8 or better area where personnel may perform hand hygiene and garbing procedures, staging of

components, order entry, labeling, and other high-particulate generating activities. It is also a transition area that:

(A) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas; and

(B) reduces the need for the heating, ventilating and air conditioning (HVAC) control system to respond to large disturbances.

(5) Aseptic Processing--A mode of processing pharmaceutical and medical preparations that involves the separate sterilization of the preparation and of the package (containers-closures or packaging material for medical devices) and the transfer of the preparation into the container and its closure under at least ISO Class 5 conditions.

(6) Automated compounding device--An automated device that compounds, measures, and/or packages a specified quantity of individual components in a predetermined sequence for a designated sterile preparation.

(7) Batch--A specific quantity of a drug or other material that is intended to have uniform character and quality, within specified limits, and is produced during a single preparation cycle.

(8) Batch preparation compounding--Compounding of multiple sterile preparation units, in a single discrete process, by the same individual(s), carried out during one limited time period. Batch preparation/compounding does not include the preparation of multiple sterile preparation units pursuant to patient specific medication orders.

(9) Beyond-use date--The date or time after which the compounded sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time the preparation is compounded.

(10) Biological Safety Cabinet, Class II--A ventilated cabinet for personnel, product or preparation, and environmental protection having an open front with inward airflow for personnel protection, downward HEPA filtered laminar airflow for product protection, and HEPA filtered exhausted air for environmental protection.

(11) Buffer Area--An ISO Class 7 or, if a Class B pharmacy, ISO Class 8 or better, area where the primary engineering control area is physically located. Activities that occur in this area include the preparation and staging of components and supplies used when compounding sterile preparations.

(12) Clean room--A room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

(13) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(14) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(15) Compounding Aseptic Isolator--A form of barrier isolator specifically designed for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment shall not occur unless it has first passed through a microbial retentive filter (HEPA minimum).

(16) Compounding Aseptic Containment Isolator--A compounding aseptic isolator designed to provide worker protection from exposure to undesirable levels of airborne drug throughout the compounding and material transfer processes and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

(17) Compounding Personnel--A pharmacist, pharmacy technician, or pharmacy technician trainee who performs the actual compounding; a pharmacist who supervises pharmacy technicians or pharmacy technician trainees compounding sterile preparations, and a pharmacist who performs an intermediate or final verification of a compounded sterile preparation.

(18) Critical Area--An ISO Class 5 environment.

(19) Critical Sites--A location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampules, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

(20) Device--An instrument, apparatus, implement, machine, contrivance, implant, in-vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(21) Direct Compounding Area--A critical area within the ISO Class 5 primary engineering control where critical sites are exposed to unidirectional HEPA-filtered air, also known as first air.

(22) Disinfectant--An agent that frees from infection, usually a chemical agent but sometimes a physical one, and that destroys disease-causing pathogens or other harmful microorganisms but may not kill bacterial and fungal spores. It refers to substances applied to inanimate objects.

(23) First Air--The air exiting the HEPA filter in a unidirectional air stream that is essentially particle free.

(24) Hazardous Drugs--Drugs that, studies in animals or humans indicate exposure to the drugs, have a potential for causing cancer, development or reproductive toxicity, or harm to organs. For the purposes of this chapter, radiopharmaceuticals are not considered hazardous drugs.

(25) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(26) HVAC--Heating, ventilation, and air conditioning.

(27) Immediate use--A sterile preparation that is not prepared according to USP 797 standards (i.e., outside the pharmacy and most likely not by pharmacy personnel) which shall be stored for no longer than one hour after completion of the preparation.

(28) IPA--Isopropyl alcohol (2-propanol).

(29) Labeling--All labels and other written, printed, or graphic matter on an immediate container of an article or preparation or on, or in, any package or wrapper in which it is enclosed, except any outer shipping container. The term "label" designates that part of the labeling on the immediate container.

(30) Media-Fill Test--A test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile preparation without microbial contamination. During this test, a microbiological growth medium such as Soybean-Casein Digest Medium is substituted for the actual drug preparation to simulate admixture compounding. The issues to consider in the development of a media-fill test are the following: media-fill procedures, media selection, fill volume, incubation, time and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

(31) Multiple-Dose Container--A multiple-unit container for articles or preparations intended for potential administration only and usually contains antimicrobial preservatives. The beyond-use date for an opened or entered (e.g., needle-punctured) multiple-dose container with antimicrobial preservatives is 28 days, unless otherwise specified by the manufacturer.

(32) Negative Pressure Room--A room that is at a lower pressure compared to adjacent spaces and, therefore, the net flow of air is into the room.

(33) Office use--The administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 562 of the Act, or for administration or provision by a veterinarian in accordance with §563.054 of the Act.

(34) Pharmacy Bulk Package--A container of a sterile preparation for potential use that contains many single doses. The contents are intended for use in a pharmacy admixture program and are restricted to the preparation of admixtures for infusion or, through a sterile transfer device, for the filling of empty sterile syringes. The closure shall be penetrated only one time after constitution with a suitable sterile transfer device or dispensing set, which allows measured dispensing of the contents. The pharmacy bulk package is to be used only in a suitable work area such as a laminar flow hood (or an equivalent clean air compounding area).

(35) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple dose container for distribution within a facility licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those facilities. The term as defined does not prohibit the prepackaging of drug products for use within other pharmacy classes.

(36) Preparation or Compounded Sterile Preparation--A sterile admixture compounded in a licensed pharmacy or other healthcare-related facility pursuant to the order of a licensed prescriber. The components of the preparation may or may not be sterile products.

(37) Primary Engineering Control--A device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding sterile preparations. Such devices include, but may not be limited to, laminar airflow workbenches, biological safety cabinets, compounding aseptic isolators, and compounding aseptic containment isolators.

(38) Product--A commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the U.S. Food and Drug Administration (FDA). Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

(39) Positive Control--A quality assurance sample prepared to test positive for microbial growth.

(40) Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile drug preparations lead to preparations that meet predetermined standards of quality.

(41) Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final compounded sterile preparations prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(42) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(43) Segregated Compounding Area--A designated space, either a demarcated area or room, that is restricted to preparing low-risk level compounded sterile preparations with 12-hour or less beyond-use date. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of compounded sterile preparations and shall be void of activities and materials that are extraneous to sterile compounding.

(44) Single-dose container--A single-unit container for articles or preparations intended for parenteral administration only. It is intended for a single use. A single-dose container is labeled as such. Examples of single-dose containers include pre-filled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

(45) SOPs--Standard operating procedures.

(46) Sterilizing Grade Membranes--Membranes that are documented to retain 100% of a culture of 107 microorganisms of a strain of Brevundimonas (Pseudomonas) diminuta per square centimeter of membrane surface under a pressure of not less than 30 psi (2.0 bar). Such filter membranes are nominally at 0.22-micrometer or 0.2-micrometer nominal pore size, depending on the manufacturer's practice.

(47) Sterilization by Filtration--Passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

(48) Terminal Sterilization--The application of a lethal process, e.g., steam under pressure or autoclaving, to sealed final preparation containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10-6 or a probability of less than one in one million of a non-sterile unit.

(49) Unidirectional Flow--An airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(50) USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. The pharmacy shall have a pharmacist-in-charge in compliance with the specific license classification of the pharmacy.

(B) Responsibilities. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning the compounding of sterile preparations:

(i) developing a system to ensure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile preparations within the pharmacy receive appropriate education and training and competency evaluation;

(ii) determining that all personnel involved in compounding sterile preparations obtain continuing education appropriate for the type of compounding done by the personnel;

(iii) supervising a system to ensure appropriate procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of sterile preparations, and drug delivery devices;

(iv) ensuring that the equipment used in compounding is properly maintained;

(v) developing a system for the disposal and distribution of drugs from the pharmacy;

(vi) developing a system for bulk compounding or batch preparation of drugs;

(vii) developing a system for the compounding, sterility assurance, quality assurance, and quality control of sterile preparations; and

(viii) if applicable, ensuring that the pharmacy has a system to dispose of hazardous waste in a manner so as not to endanger the public health.

(2) Pharmacists.

(A) General.

(i) A pharmacist is responsible for ensuring that compounded sterile preparations are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed.

(ii) A pharmacist shall inspect and approve all components, drug preparation containers, closures, labeling, and any other materials involved in the compounding process.

(iii) A pharmacist shall review all compounding records for accuracy and conduct periodic in-process checks as defined in the pharmacy's policy and procedures.

(iv) A pharmacist shall review all compounding records for accuracy and conduct a final check.

(v) A pharmacist is responsible for ensuring the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(vi) A pharmacist shall be accessible at all times, 24 hours a day, to respond to patients' and other health professionals' questions and needs.

(B) Initial training and continuing education.

(i) All pharmacists who compound sterile preparations or supervise pharmacy technicians and pharmacy technician trainees compounding sterile preparations shall comply with the following:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE accredited provider;

(II) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the facility's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(III) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who is actively engaged in performing sterile compounding and is qualified and has completed training as specified in this paragraph or paragraph (3) of this subsection.

(iii) In order to renew a license to practice pharmacy, during the previous licensure period, a pharmacist engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding low and medium risk sterile preparations; or

(II) four hours of ACPE-accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacist is engaged in compounding high risk sterile preparations.

(3) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Initial training and continuing education.

(i) Pharmacy technicians and pharmacy technician trainees may compound sterile preparations provided the pharmacy technicians and/or pharmacy technician trainees are supervised by a pharmacist as specified in paragraph (2) of this subsection.

(ii) All pharmacy technicians and pharmacy technician trainees who compound sterile preparations for administration to patients shall:

(I) have initial training obtained either through completion of:

(-a-) a single course, a minimum of 40 hours of instruction and experience in the areas listed in paragraph (4)(D) of this subsection. Such training shall be obtained through completion of a course sponsored by an ACPE accredited provider which provides 40 hours of instruction and experience; or

(-b-) a training program which is accredited by the American Society of Health-System Pharmacists.

(II) and

(-a-) complete a structured on-the-job didactic and experiential training program at this pharmacy which provides sufficient hours of instruction and experience in the facility's sterile compounding processes and procedures. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; and

(-b-) possess knowledge about:

(-1-) aseptic processing;

(-2-) quality control and quality assurance as related to environmental, component, and finished preparation release checks and tests;

(-3-) chemical, pharmaceutical, and clinical properties of drugs;

(-4-) container, equipment, and closure system selection; and

(-5-) sterilization techniques.

(iii) Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile preparations in a licensed pharmacy provided the:

(I) compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(II) individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection; [~~and~~]

(III) supervising pharmacist conducts periodic in-process checks as defined in the pharmacy's policy and procedures; and

(IV) supervising pharmacist conducts a final check.

(iv) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who is actively engaged in performing sterile compounding, is qualified and has completed training as specified in paragraph (2) of this subsection or this paragraph.

(v) In order to renew a registration as a pharmacy technician, during the previous registration period, a pharmacy technician engaged in sterile compounding shall complete a minimum of:

(I) two hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacy technician is engaged in compounding low and medium risk sterile preparations; or

(II) four hours of ACPE accredited continuing education relating to one or more of the areas listed in paragraph (4)(D) of this subsection if the pharmacy technician is engaged in compounding high risk sterile preparations.

(4) Evaluation and testing requirements.

(A) All pharmacy personnel preparing sterile preparations shall be trained conscientiously and skillfully by expert personnel through multimedia instructional sources and professional publications in the theoretical principles and practical skills of aseptic manipulations, garbing procedures, aseptic work practices, achieving and maintaining ISO Class 5 environmental conditions, and cleaning and disinfection procedures before beginning to prepare compounded sterile preparations.

(B) All pharmacy personnel preparing sterile preparations shall perform didactic review and pass written and media-fill testing of aseptic manipulative skills initially followed by:

(i) every 12 months for low- and medium-risk level compounding; and

(ii) every six months for high-risk level compounding.

(C) Pharmacy personnel who fail written tests or whose media-fill tests [~~test vials~~] result in gross microbial colonization shall:

(i) be immediately re-instructed and re-evaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies; and

(ii) not be allowed to compound sterile preparations for patient use until passing results are achieved.

(D) The didactic and experiential training shall include instruction, experience, and demonstrated proficiency in the following areas:

(i) aseptic technique;

(ii) critical area contamination factors;

(iii) environmental monitoring;

(iv) structure and engineering controls related to facilities;

(v) equipment and supplies;

(vi) sterile preparation calculations and terminology;

(vii) sterile preparation compounding documentation;

(viii) quality assurance procedures;

(ix) aseptic preparation procedures including proper gowning and gloving technique;

(x) handling of hazardous drugs, if applicable;

(xi) cleaning procedures; and

(xii) general conduct in the clean room.

(E) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile preparations shall be observed and evaluated by expert personnel

as satisfactory through written and practical tests, and challenge testing, and such evaluation documented. Compounding personnel shall not evaluate their own aseptic technique or results of their own media-fill challenge testing.

(F) Media-fill tests must be conducted at each pharmacy where an individual compounds low or medium risk sterile preparations. If pharmacies are under common ownership and control, the media-fill testing of a supervisory pharmacist who does not actively work in the compounding area may be conducted at only one of the pharmacies provided each of the pharmacies are operated under equivalent policies and procedures and the testing is conducted under the most challenging or stressful conditions. In addition, each pharmacy must maintain documentation of the media-fill test. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(G) Media-fill tests must be conducted at each pharmacy where an individual compounds high risk sterile preparations. No preparation intended for patient use shall be compounded by an individual until the on-site media-fill tests indicate that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile preparations and supervise pharmacy technicians compounding sterile preparations without media-fill tests provided the pharmacist completes the on-site media-fill tests within seven days of commencing work at the pharmacy.

(H) Media-fill testing [~~tests~~] procedures for assessing the preparation of specific types of sterile preparations shall be representative of the most challenging or stressful conditions encountered by the pharmacy personnel being evaluated and, if applicable, for sterilizing high-risk level compounded sterile preparations.

(I) Media-fill challenge tests simulating high-risk level compounding shall be used to verify the capability of the compounding environment and process to produce a sterile preparation.

(J) Commercially available sterile fluid culture media for low and medium risk level compounding or non-sterile fluid culture media for high risk level compounding[~~, such as Soybean-Casein Digest Medium~~] shall be able to promote exponential colonization of bacteria that are most likely to be transmitted to compounding sterile preparations from the compounding personnel and environment. Media-filled vials are generally incubated at 20 to 25 degrees Celsius or at 30 to 35 degrees Celsius for a minimum of 14 days. If two temperatures are used for incubation of media-filled samples, then these filled containers should be incubated for at least 7 days at each temperature. Failure is indicated by visible turbidity in the medium on or before 14 days.

(K) The pharmacist-in-charge shall ensure continuing competency of pharmacy personnel through in-service education, training, and media-fill tests to supplement initial training. Personnel competency shall be evaluated:

(i) during orientation and training prior to the regular performance of those tasks;

(ii) whenever the quality assurance program yields an unacceptable result;

(iii) whenever unacceptable techniques are observed; and

(iv) at least on an annual basis for low- and medium-risk level compounding, and every six months for high-risk level compounding.

(L) The pharmacist-in-charge shall ensure that proper hand hygiene and garbing practices of compounding personnel are evaluated prior to compounding, supervising, or verifying sterile preparations intended for patient use and whenever an aseptic media fill is performed.

(i) Sampling of compounding personnel glove fingertips shall be performed for all risk level compounding. If pharmacies are under common ownership and control, the gloved fingertip sampling may be conducted at only one of the pharmacies provided each of the pharmacies are operated under equivalent policies and procedures and the testing is conducted under the most challenging or stressful conditions. In addition, each pharmacy must maintain documentation of the gloved fingertip sampling of all compounding personnel.

(ii) All compounding personnel shall demonstrate competency in proper hand hygiene and garbing procedures and in aseptic work practices (e.g., disinfection of component surfaces, routine disinfection of gloved hands).

(iii) Sterile contact agar plates shall be used to sample the gloved fingertips of compounding personnel after garbing in order to assess garbing competency and after completing the media-fill preparation (without applying sterile 70% IPA).

(iv) The visual observation shall be documented and maintained to provide a permanent record and long-term assessment of personnel competency.

(v) All compounding personnel shall successfully complete an initial competency evaluation and gloved fingertip/thumb sampling procedure no less than three times before initially being allowed to compound sterile preparations for patient use. Immediately after the compounding personnel completes the hand hygiene and garbing procedure (i.e., after donning of sterile gloves and before any disinfecting with sterile 70% IPA), the evaluator will collect a gloved fingertip and thumb sample from both hands of the compounding personnel onto contact plates or swabs [~~agar plates or media test paddles~~] by having the individual lightly touching each fingertip onto the testing medium [~~agar~~]. The contact plates or swabs [~~test plates or test paddles~~] will be incubated for the appropriate incubation period and at the appropriate temperature. Results of the initial gloved fingertip evaluations shall indicate zero colony-forming units (0 CFU) growth on the contact plates or swabs [~~agar plates or media test paddles~~], or the test shall be considered a failure. In the event of a failed gloved fingertip test, the evaluation shall be repeated until the individual can successfully don sterile gloves and pass the gloved fingertip evaluation, defined as zero CFUs growth. No preparation intended for patient use shall be compounded by an individual until the results of the initial gloved fingertip evaluation indicate that the individual can competently perform aseptic procedures except that a pharmacist may temporarily physically supervise pharmacy technicians compounding sterile preparations before [~~while waiting for~~] the results of the evaluation have been received for no more than three days from the date of the test.

(vi) Re-evaluation of all compounding personnel shall occur at least annually for compounding personnel who compound low and medium risk level preparations and every six months for compounding personnel who compound high risk level preparations. Results of gloved fingertip tests conducted immediately after compounding personnel complete a compounding procedure shall indicate no more than 3 CFUs growth, or the test shall be considered

a failure, in which case, the evaluation shall be repeated until an acceptable test can be achieved (i.e., the results indicated no more than 3 CFUs growth).

(M) The pharmacist-in-charge shall ensure surface sampling shall be conducted in all ISO classified areas on a periodic basis. Sampling shall be accomplished using contact plates or swabs at the conclusion of compounding. The sample area shall be gently touched with the agar surface by rolling the plate across the surface to be sampled.

(5) Documentation of Training. The pharmacy shall maintain a record of the training and continuing education on each person who compounds sterile preparations. The record shall contain, at a minimum, a written record of initial and in-service training, education, and the results of written and practical testing and media-fill testing of pharmacy personnel. The record shall be maintained and available for inspection by the board and contain the following information:

(A) name of the person receiving the training or completing the testing or media-fill tests;

(B) date(s) of the training, testing, or media-fill challenge testing;

(C) general description of the topics covered in the training or testing or of the process validated;

(D) name of the person supervising the training, testing, or media-fill challenge testing; and

(E) signature or initials of the person receiving the training or completing the testing or media-fill challenge testing and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or media-fill challenge testing of personnel.

(d) Operational Standards.

(1) General Requirements.

(A) Sterile preparations may be compounded:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (6)(G) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (6)(G) of this subsection;

(IV) quantity or amount in the container;

(V) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(VI) device-specific instructions, where appropriate.

(C) Commercially available products may be compounded for dispensing to individual patients or for office use provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet individual patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the individual patient needs the particular strength or dosage form of the preparation or why the preparation for office use is needed in the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g., the physician requests an alternate preparation due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription drug or[/]medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide sterile prescription compounding services, which may include specific drug preparations and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) Compounded sterile preparations, including hazardous drugs and radiopharmaceuticals, shall be prepared only under

conditions that protect the pharmacy personnel in the preparation and storage areas.

(2) Microbial Contamination Risk Levels. Risk Levels for sterile compounded preparations shall be as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF and as listed in this paragraph.

(A) Low-risk level compounded sterile preparations.

(i) Low-Risk conditions. Low-risk level compounded sterile preparations are those compounded under all of the following conditions:[-]

(I) The compounded sterile preparations are compounded with aseptic manipulations entirely within ISO Class 5 or better air quality using only sterile ingredients, products, components, and devices;[-]

(II) The compounding involves only transfer, measuring, and mixing manipulations using not more than three commercially manufactured packages of sterile products and not more than two entries into any one sterile container or package (e.g., bag, vial) of sterile product or administration container/device to prepare the compounded sterile preparation;[-]

(III) Manipulations are limited to aseptically opening ampules [~~ampuls~~], penetrating disinfected stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices, package containers of other sterile products, and containers for storage and dispensing;[-]

(IV) For a low-risk level preparation, in the absence of passing a sterility test the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparation is stored properly and are exposed for not more than 48 hours at controlled room temperature, for not more than 14 days if stored at a cold temperature, and for 45 days if stored in a frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius. For delayed activation device systems, the storage period begins when the device is activated.

(ii) Examples of Low-Risk Level Compounding. Examples of low-risk level compounding include the following:[-]

(I) Single volume transfers of sterile dosage forms from ampules [~~ampuls~~], bottles, bags, and vials using sterile syringes with sterile needles, other administration devices, and other sterile containers. The solution content of ampules shall be passed through a sterile filter to remove any particles;[-]

(II) Simple aseptic measuring and transferring with not more than three packages of manufactured sterile products, including an infusion or diluent solution to compound drug admixtures and nutritional solutions.

(B) Low-Risk Level compounded sterile preparations with 12-hour or less beyond-use date. Low-risk level compounded sterile preparations are those compounded pursuant to a physician's order for a specific patient under all of the following conditions:[-]

(i) The compounded sterile preparations are compounded in compounding aseptic isolator or compounding aseptic containment isolator that does not meet the requirements described in paragraph (7)(C) or (D) of this subsection (relating to Primary Engineering Control Device) or the compounded sterile preparations are compounded in laminar airflow workbench or a biological safety cabinet that cannot be located within the buffer area;[-]

(ii) The primary engineering control device shall be certified and maintain ISO Class 5 for exposure of critical sites and shall be located in a segregated compounding area restricted to sterile compounding activities that minimizes the risk of contamination of the compounded sterile preparation;[-]

(iii) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors or high traffic flow, or that is adjacent to construction sites, warehouses, or food preparation.

(iv) For a low-risk level preparation compounded as described in clauses (i) - (iii) of this subparagraph, administration of such compounded sterile preparations must commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less. However, the administration of sterile radiopharmaceuticals, with documented testing of chemical stability, may be administered beyond 12 hours of preparation.

(C) Medium-risk level compounded sterile preparations.

(i) Medium-Risk Conditions. Medium-risk level compounded sterile preparations, are those compounded aseptically under low-risk conditions and one or more of the following conditions exists:[-]

(I) Multiple individual or small doses of sterile products are combined or pooled to prepare a compounded sterile preparation that will be administered either to multiple patients or to one patient on multiple occasions;[-]

(II) The compounding process includes complex aseptic manipulations other than the single-volume transfer;[-]

(III) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogenous mixing (e.g., reconstitution of intravenous immunoglobulin or other intravenous protein products);[-]

(IV) The compounded sterile preparations do not contain broad spectrum bacteriostatic substances and they are administered over several days (e.g., an externally worn infusion device); or[-]

(V) For a medium-risk level preparation, in the absence of passing a sterility test the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 30 hours at controlled room temperature, for not more than 9 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius.

(ii) Examples of medium-risk compounding. Examples of medium-risk compounding include the following:[-]

(I) Compounding of total parenteral nutrition fluids using a manual or automated device during which there are multiple injections, detachments, and attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container;[-]

(II) Filling of reservoirs of injection and infusion devices with more than three sterile drug products and evacuations of air from those reservoirs before the filled device is dispensed;[-]

(III) Filling of reservoirs of injection and infusion devices with volumes of sterile drug solutions that will be administered over several days at ambient temperatures between 25 and 40 degrees Celsius (77 and 104 degrees Fahrenheit); and[-]

(IV) Transfer of volumes from multiple ampules [~~ampuls~~] or vials into a single, final sterile container or product.

(D) High-risk level compounded sterile preparations.

(i) High-risk Conditions. High-risk level compounded sterile preparations are those compounded under any of the following conditions:[.]

(I) Non-sterile ingredients, including manufactured products not intended for sterile routes of administration (e.g., oral) are incorporated or a non-sterile device is employed before terminal sterilization.

(II) Any of the following are exposed to air quality worse than ISO Class 5 for more than 1 hour:

(-a-) sterile contents of commercially manufactured products;

(-b-) CSPs that lack effective antimicrobial preservatives; and

(-c-) sterile surfaces of devices and containers for the preparation, transfer, sterilization, and packaging of CSPs;[.]

(III) Compounding personnel are improperly garbed and gloved;[.]

(IV) Non-sterile water-containing preparations are exposed no more than 6 hours before being sterilized;[.]

(V) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or compendial specifications in unopened or in opened packages of bulk ingredients;[.]

(VI) For a sterilized high-risk level preparation, in the absence of passing a sterility test, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 24 hours at controlled room temperature, for not more than 3 days at a cold temperature, and for 45 days in solid frozen state between minus 25 degrees Celsius and minus 10 degrees Celsius; or[.]

(VII) All non-sterile measuring, mixing, and purifying devices are rinsed thoroughly with [~~sterile,~~] pyrogen-free or depyrogenated sterile water, and then thoroughly drained or dried immediately before use for high-risk compounding. All high-risk compounded sterile solutions subjected to terminal sterilization are prefiltered by passing through a filter with a nominal pore size not larger than 1.2 micron preceding or during filling into their final containers to remove particulate matter. Sterilization of high-risk level compounded sterile preparations by filtration shall be performed with a sterile 0.2 micrometer or 0.22 micrometer nominal pore size filter entirely within an ISO Class 5 or superior air quality environment.

(ii) Examples of high-risk compounding. Examples of high-risk compounding include the following.

(I) Dissolving non-sterile bulk drug powders to make solutions, which will be terminally sterilized;[.]

(II) Exposing the sterile ingredients and components used to prepare and package compounded sterile preparations to room air quality worse than ISO Class 5 for more than one hour;[.]

(III) Measuring and mixing sterile ingredients in non-sterile devices before sterilization is performed; and[.]

(IV) Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95% by weight of their active chemical moiety and have not been contaminated or adulterated between uses.

(3) Immediate Use Compounded Sterile Preparations. For the purpose of emergency or immediate patient care, such situations may include cardiopulmonary resuscitation, emergency room treatment, preparation of diagnostic agents, or critical therapy where the preparation of the compounded sterile preparation under low-risk level conditions would subject the patient to additional risk due to delays in therapy. Compounded sterile preparations are exempted from the requirements described in this paragraph for low-risk level compounded sterile preparations when all of the following criteria are met:[.]

(A) Only simple aseptic measuring and transfer manipulations are performed with not more than three sterile non-hazardous commercial drug and diagnostic radiopharmaceutical drug products, including an infusion or diluent solution, from the manufacturers' original containers and not more than two entries into any one container or package of sterile infusion solution or administration container/device;[.]

(B) Unless required for the preparation, the compounding procedure occurs continuously without delays or interruptions and does not exceed 1 hour;[.]

(C) During preparation, aseptic technique is followed and, if not immediately administered, the finished compounded sterile preparation is under continuous supervision to minimize the potential for contact with nonsterile surfaces, introduction of particulate matter of biological fluids, mix-ups with other compounded sterile preparations, and direct contact with [~~of~~] outside surfaces;[.]

(D) Administration begins not later than one hour following the completion of preparing the compounded sterile preparation;[.]

(E) When the compounded sterile preparations is not administered by the person who prepared it, or its administration is not witnessed by the person who prepared it, the compounded sterile preparation shall bear a label listing patient identification information such as name and identification number(s), the names and amounts of all ingredients, the name or initials of the person who prepared the compounded sterile preparation, and the exact 1-hour beyond-use time and date;[.]

(F) If administration has not begun within one hour following the completion of preparing the compounded sterile preparation, the compounded sterile preparation is promptly and safely discarded. Immediate use compounded sterile preparations shall not be stored for later use; and[.]

(G) Hazardous drugs shall not be prepared as immediate use compounded sterile preparations.

(4) Single-dose and multiple dose containers.

(A) Opened or needle punctured single-dose containers, such as bags bottles, syringes, and vials of sterile products shall be used within one hour if opened in worse than ISO Class 5 air quality. Any remaining contents must be discarded.

(B) Single-dose containers, including single-dose large volume parenteral solutions and single-dose vials, exposed to ISO Class 5 or cleaner air may be used up to six hours after initial needle puncture.

(C) Opened single-dose fusion sealed containers shall not be stored for any time period.

(D) Multiple-dose containers may be used up to 28 days after initial needle puncture unless otherwise specified by the manufacturer.

(5) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain

current or updated copies in hard-copy or electronic format of each of the following:

(A) a reference text on injectable drug preparations, such as Handbook on Injectable Drug Products;

(B) a specialty reference text appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares hazardous drugs, a reference text on the preparation of hazardous drugs; [~~and~~]

(C) the United States Pharmacopeia/National Formulary containing USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding--Nonsterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding; and

(D) any additional USP/NF chapters applicable to the practice of the pharmacy (e.g., USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses).

(6) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination from contacting critical sites.

(A) Low and Medium Risk Preparations. A pharmacy that prepares low- and medium-risk preparations shall have a clean room for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room shall:

(i) be clean, well lit, and of sufficient size to support sterile compounding activities;

(ii) be maintained at a temperature of 20 degrees Celsius or cooler and at a humidity below 60%;

(iii) be used only for the compounding of sterile preparations;

(iv) be designed such that hand sanitizing and gowning occurs outside the buffer area but allows hands-free access by compounding personnel to the buffer area;

(v) have non-porous and washable floors or floor covering to enable regular disinfection;

(vi) be ventilated in a manner to avoid disruption from the HVAC system and room cross-drafts;

(vii) have walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices (e.g., coved), non-shedding and resistant to damage by disinfectant agents;

(viii) have junctures of ceilings to walls coved or caulked to avoid cracks and crevices;

(ix) have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning;

(x) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the clean room. A Class B pharmacy may use low-linting absorbent materials in the primary engineering control device;

(xi) contain an ante-area that contains a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination. A Class B pharmacy may have a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing immediately outside the ante-area if antiseptic hand cleansing is performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations once inside the ante-area; and

(xii) contain a buffer area. The following is applicable for the buffer area:[~~.~~]

(I) There shall be some demarcation designation that delineates the ante-area from the buffer area. The demarcation shall be such that it does not create conditions that could adversely affect the cleanliness of the area;[~~.~~]

(II) The buffer area shall be segregated from surrounding, unclassified spaces to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the filtered unidirectional airflow environment, and this segregation should be continuously monitored;[~~.~~]

(III) A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel; and[~~.~~]

(IV) The buffer area shall not contain sources of water (i.e., sinks) or floor drains other than distilled or sterile water introduced for facilitating the use of heat block wells for radiopharmaceuticals.

(B) High-risk Preparations.

(i) In addition to the requirements in subparagraph (A) of this paragraph, when high-risk preparations are compounded, the primary engineering control shall be located in a buffer area that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(ii) Presterilization procedures for high-risk level compounded sterile preparations, such as weighing and mixing, shall be completed in no worse than an ISO Class 8 environment.

(C) Automated compounding device.

(i) General. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a daily basis, based on the manufacturer's recommendations, and review the results at least weekly.

(ii) Loading bulk drugs into automated compounding devices.

(I) Automated compounding devices [~~device~~] may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of an automated compounding device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(III) Records of loading bulk drugs into an automated compounding device shall be maintained to show:

(-a-) name of the drug, strength, and dosage form;

(-b-) manufacturer or distributor;

(-c-) manufacturer's lot number;

(-d-) manufacturer's expiration date;

(-e-) quantity added to the automated compounding device;

(-f-) date of loading;

(-g-) name, initials, or electronic signature of the person loading the automated compounding device; and

(-h-) name, initials, or electronic signature of the responsible pharmacist.

(IV) The automated compounding device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in subclause (III) of this clause.

(D) Hazardous drugs. If the preparation is hazardous, the following is also applicable:[.]

(i) Hazardous drugs shall be prepared only under conditions that protect personnel during preparation and storage;[.]

(ii) Hazardous drugs shall be stored separately from other inventory in a manner to prevent contamination and personnel exposure;[.]

(iii) All personnel involved in the compounding of hazardous drugs shall wear appropriate protective apparel, such as gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, and appropriate gloving at all times when handling hazardous drugs, including receiving, distribution, stocking, inventorying, preparation, for administration and disposal;[.]

(iv) Appropriate safety and containment techniques for compounding hazardous drugs shall be used in conjunction with aseptic techniques required for preparing sterile preparations;[.]

(v) Disposal of hazardous waste shall comply with all applicable local, state, and federal requirements;[.]

(vi) Prepared doses of hazardous drugs must be dispensed, labeled with proper precautions inside and outside, and distributed in a manner to minimize patient contact with hazardous agents.

(E) Blood-labeling procedures. When compounding activities require the manipulation of a patient's blood-derived material (e.g., radiolabeling a patient's or donor's white blood cells), the manipulations shall be performed in a ISO Class 5 biological safety cabinet located in a buffer area and shall be clearly separated from routine material-handling procedures and equipment used in preparation activities to avoid any cross-contamination. The preparations shall not require sterilization.

(F) Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequencies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer areas, ante-areas, and segregated compounding areas.

(i) The pharmacist-in-charge is responsible for developing written standard operating procedures (SOPs) for cleaning and disinfecting the direct and contiguous compounding areas and assuring the procedures are followed.

(ii) These procedures shall be conducted at the beginning of each work shift, before each batch preparation is started, when there are spills, and when surface contamination is known or suspected resulting from procedural breaches, and every 30 minutes during continuous compounding of individual compounded sterile preparations, unless a particular compounding procedure requires more than 30 minutes to complete, in which case, the direct compounding area is to be cleaned immediately after the compounding activity is completed.

(iii) Before compounding is performed, all items shall be removed from the direct and contiguous compounding areas and all surfaces are cleaned by removing loose material and residue from spills, followed by an application of a residue-free disinfecting agent (e.g., IPA), which is allowed to dry before compounding begins. In a Class B pharmacy, objects used in preparing sterile radiopharmaceuticals (e.g., dose calibrator) which cannot be reasonably removed from the compounding area shall be sterilized with an application of a residue-free disinfection agent.

(iv) Work surfaces in the buffer areas and ante-areas, as well as segregated compounding areas, shall be cleaned and disinfected at least daily. Dust and debris shall be removed when necessary from storage sites for compounding ingredients and supplies using a method that does not degrade the ISO Class 7 or 8 air quality.

(v) Floors in the buffer area, ante-area, and segregated compounding area shall be [~~are~~] cleaned by mopping with a cleaning and disinfecting agent at least once daily when no aseptic operations are in progress. Mopping shall be performed by trained personnel using approved agents and procedures described in the written SOPs. It is incumbent on compounding personnel to ensure that such cleaning is performed properly.

(vi) In the buffer area, ante-area, and segregated compounding area, walls, ceilings, and shelving shall be cleaned and disinfected monthly. Cleaning and disinfecting agents shall be used with careful consideration of compatibilities, effectiveness, and inappropriate or toxic residues.

(vii) All cleaning materials, such as wipers, sponges, and mops, shall be non-shedding, and dedicated to use in the buffer area, ante-area, and segregated compounding areas and shall not be removed from these areas except for disposal. Floor mops may be used in both the buffer area and ante-area, but only in that order. If cleaning materials are reused, procedures shall be developed that ensure that the effectiveness of the cleaning device is maintained and that repeated use does not add to the bio-burden of the area being cleaned.

(viii) Supplies and equipment removed from shipping cartons must be wiped with a disinfecting agent, such as sterile IPA. After the disinfectant is sprayed or wiped on a surface to be disinfected, the disinfectant shall be allowed to dry, during which time the item shall not be used for compounding purposes. However, if sterile supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the ISO Class 5 area without the need to disinfect the individual sterile supply items. No shipping or other external cartons may be taken into the buffer area or segregated compounding area.

(ix) Storage shelving emptied of all supplies, walls, and ceilings shall be [~~are~~] cleaned and disinfected at planned intervals, monthly, if not more frequently.

(x) Cleaning must be done by personnel trained in appropriate cleaning techniques.

(xi) Proper documentation and frequency of cleaning must be maintained and shall contain the following:

(I) date and time of cleaning;

(II) type of cleaning performed; and

(III) name of individual who performed the cleaning.

(G) Security requirements. The pharmacist-in-charge may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile preparations shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(H) Storage requirements and beyond-use dating.

(i) Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(ii) Beyond-use dating.

(I) Beyond-use dates for compounded sterile preparations shall be assigned based on professional experience, which shall include careful interpretation of appropriate information sources for the same or similar formulations.

(II) Beyond-use dates for compounded sterile preparations that are prepared strictly in accordance with manufacturers' product labeling must be those specified in that labeling, or from appropriate literature sources or direct testing.

(III) When assigning a beyond-use date, compounding personnel shall consult and apply drug-specific and general stability documentation and literature where available, and they should consider the nature of the drug and its degradation mechanism, the container in which it is packaged, the expected storage conditions, and the intended duration of therapy.

(IV) The sterility and storage and stability beyond-use date for attached and activated container pairs of drug products for intravascular administration shall be applied as indicated by the manufacturer.

(7) Primary engineering control device. The pharmacy shall prepare sterile preparations in a primary engineering control device (PEC), such as a laminar air flow hood, biological safety cabinet, compounding aseptic isolator (CAI), or compounding aseptic containment isolator (CACI) which is capable of maintaining at least ISO Class 5 conditions for 0.5 micrometer particles while compounding sterile preparations.

(A) Laminar air flow hood. If the pharmacy is using a laminar air flow hood as its PEC, the laminar air flow hood shall:

(i) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(ii) be certified for operational efficiency using certification procedures, such as those outlined in the Certification Guide for Sterile Compounding Facilities (CAG-003-2006), which shall be performed by a qualified independent individual no less than [~~by a qualified independent contractor according to the appropriate Controlled Environment Testing Association (CETA) standard (CAG-003-2006) for operational efficiency at least~~] every six months and whenever the device or room is relocated or altered or major service to the facility is performed;

(iii) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(iv) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column. A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(B) Biological safety cabinet.

(i) If the pharmacy is using a biological safety cabinet (BSC) as its PEC for the preparation of hazardous sterile compounded preparations, the biological safety cabinet shall be a Class II or III vertical flow biological safety cabinet located in an ISO Class 7 area that is physically separated from other preparation areas. The area for preparation of sterile chemotherapeutic preparations shall:

(I) have not less than 0.01 inches water column negative pressure to the adjacent positive pressure ISO Class 7 or better ante-area; and

(II) have a pressure indicator that can be readily monitored for correct room pressurization.

(ii) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clause (i) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., closed-system vial transfer device within a BSC).

(iii) If the pharmacy is using a biological safety cabinet as its PEC for the preparation of non-hazardous sterile compounded preparations, the biological safety cabinet shall:

(I) be located in the buffer area and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;

(II) be certified for operational efficiency using certification procedures, such as those outlined in the Certification Guide for Sterile Compounding Facilities (CAG-003-2006), which shall be performed by a qualified independent individual no less than [~~by a qualified independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least~~] every six months and whenever the device or room is relocated or altered or major service to the facility is performed[~~, in accordance with the manufacturer's specifications and test procedures specified in the Institute of Environmental Sciences and Technology (IEST) document IEST-RP-CC002.3~~];

(III) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented; and

(IV) be located in a buffer area that has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(C) Compounding aseptic isolator.

(i) If the pharmacy is using a compounding aseptic isolator (CAI) as its PEC, the CAI shall provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area unless the isolator meets all of the following conditions:

(I) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations;[.]

(II) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations;[.]

(III) The CAI must be certified for operational efficiency using certification procedures, such as those outlined in the Certification Guide for Sterile Compounding Facilities (CAG-003-2006), which shall be performed by a qualified independent individual no less than every six months and whenever the device or room is relocated or altered or major service to the facility is performed; and [~~be validated according to CETA CAG-002-2006 standards~~]

(IV) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the isolator meets the requirements in clause (i) of this subparagraph, the CAI may be placed in a non-ISO classified area of the pharmacy; however, the area shall be segregated from other areas of the pharmacy and shall:

(I) be clean, well lit, and of sufficient size;

(II) be used only for the compounding of low- and medium-risk, non-hazardous sterile preparations;

(III) be located in an area of the pharmacy with non-porous and washable floors or floor covering to enable regular disinfection; and

(IV) be an area in which the CAI is placed in a manner as to avoid conditions that could adversely affect its operation.

(iii) In addition to the requirements specified in clauses (i) and (ii) of this subparagraph, if the CAI is used in the compounding of high-risk non-hazardous preparations, the CAI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders weighed in at least ISO-8 air quality conditions, compounding utensils for measuring and other compounding equipment are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(D) Compounding aseptic containment isolator.

(i) If the pharmacy is using a compounding aseptic containment isolator (CACI) as its PEC for the preparation of low- and medium-risk hazardous drugs, the CACI shall be located in a separate room away from other areas of the pharmacy and shall:

(I) provide at least 0.01 inches water column negative pressure compared to the other areas of the pharmacy;

(II) provide unidirectional airflow within the main processing and antechambers, and be placed in an ISO Class 7 buffer area, unless the CACI meets all of the following conditions;[.]

(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations;[.]

(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations;[.]

(-c-) The CACI must be certified for operational efficiency using certification procedures, such as those outlined in the Certification Guide for Sterile Compounding Facilities (CAG-003-2006), which shall be performed by a qualified independent individual no less than every six months and whenever the device or room is relocated or altered or major service to the facility is performed; and [~~validated according to CETA CAG-002-2006 standards.~~]

(-d-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.

(ii) If the CACI meets all conditions specified in clause (i) of this subparagraph, the CACI shall not be located in the same room as a CAI, but shall be located in a separate room in the pharmacy, that is not required to maintain ISO classified air. The room in which the CACI is located shall provide a minimum of 0.01 inches water column negative pressure compared with the other areas of the pharmacy and shall meet the following requirements:

(I) be clean, well lit, and of sufficient size;

(II) be maintained at a temperature of 20 degrees Celsius or cooler and a humidity below 60%;

(III) be used only for the compounding of hazardous sterile preparations;

(IV) be located in an area of the pharmacy with walls, ceilings, floors, fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices, non-shedding and resistant to damage by disinfectant agents; and

(V) have non-porous and washable floors or floor covering to enable regular disinfection.

(iii) If the CACI is used in the compounding of high-risk hazardous preparations, the CACI shall be placed in an area or room with at least ISO 8 quality air so that high-risk powders, weighed in at least ISO-8 air quality conditions, are not exposed to lesser air quality prior to the completion of compounding and packaging of the high-risk preparation.

(iv) Pharmacies that prepare a low volume of hazardous drugs, are not required to comply with the provisions of clauses (i) and (iii) of this subparagraph if the pharmacy uses a device that provides two tiers of containment (e.g., CACI that is located in a non-negative pressure room).

(8) Additional Equipment and Supplies. Pharmacies compounding sterile preparations shall have the following equipment and supplies:

(A) a calibrated system or device (i.e., thermometer) to monitor the temperature to ensure that proper storage requirements are met, if sterile preparations are stored in the refrigerator;

(B) a calibrated system or device to monitor the temperature where bulk chemicals are stored;

(C) a temperature-sensing mechanism suitably placed in the controlled temperature storage space to reflect accurately the true temperature;

(D) if applicable, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and subject to periodic inspection by the Texas State Board of Pharmacy;

(E) equipment and utensils necessary for the proper compounding of sterile preparations. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design, appropriate capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug preparation beyond the desired result;

(iii) cleaned and sanitized immediately prior to and after each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance;

(F) appropriate disposal containers for used needles, syringes, etc., and if applicable, hazardous waste from the preparation of hazardous drugs and/or biohazardous waste;

(G) appropriate packaging or delivery containers to maintain proper storage conditions for sterile preparations;

(H) infusion devices, if applicable; and

(I) all necessary supplies, including:

(i) disposable needles, syringes, and other supplies for aseptic mixing;

(ii) disinfectant cleaning solutions;

(iii) sterile 70% isopropyl alcohol;

(iv) sterile gloves, both for hazardous and non-hazardous drug compounding;

(v) sterile alcohol-based or water-less alcohol based surgical scrub;

(vi) hand washing agents with bactericidal action;

(vii) disposable, lint free towels or wipes;

(viii) appropriate filters and filtration equipment;

(ix) hazardous spill kits, if applicable; and

(x) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(9) Labeling.

(A) Prescription drug or medication orders. In addition to the labeling requirements for the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following:

(i) the generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded sterile preparation;

(ii) for outpatient prescription orders other than sterile radiopharmaceuticals, a statement that the compounded sterile preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement); and

(iii) a beyond-use date. The beyond-use date shall be determined as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF, and paragraph (7)(G) of this subsection;

(B) Batch. If the sterile preparation is compounded in a batch, the following shall also be included on the batch label:

(i) unique lot number assigned to the batch;

(ii) quantity;

(iii) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(iv) device-specific instructions, where appropriate.

(C) Pharmacy bulk package. The label of a pharmacy bulk package shall:

(i) state prominently "Pharmacy Bulk Package--Not for Direct Infusion;"

(ii) contain or refer to information on proper techniques to help ensure safe use of the preparation; and

(iii) bear a statement limiting the time frame in which the container may be used once it has been entered, provided it is held under the labeled storage conditions.

(10) Written drug information for prescription drug orders only. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing a prescription drug order. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient shall be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate, the prescriber, concerning the drug. This paragraph does not apply to the preparation of radiopharmaceuticals.

(11) Pharmaceutical Care Services. In addition to the pharmaceutical care requirements for the pharmacy's specific license classification, the following requirements for sterile preparations compounded pursuant to prescription drug orders must be met. This paragraph does not apply to the preparation of radiopharmaceuticals.

(A) Primary provider. There shall be a designated physician primarily responsible for the patient's medical care. There shall be a clear understanding between the physician, the patient, and the pharmacy of the responsibilities of each in the areas of the delivery of care, and the monitoring of the patient. This shall be documented in the patient medication record (PMR).

(B) Patient training. The pharmacist-in-charge shall develop policies to ensure that the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use, including instruction when applicable, regarding:

(i) appropriate disposition of hazardous solutions and ancillary supplies;

(ii) proper disposition of controlled substances in the home;

(iii) self-administration of drugs, where appropriate;

(iv) emergency procedures, including how to contact an appropriate individual in the event of problems or emergencies related to drug therapy; and

(v) if the patient or patient's caregiver prepares sterile preparations in the home, the following additional information shall be provided:

(I) safeguards against microbial contamination, including aseptic techniques for compounding intravenous admixtures and aseptic techniques for injecting additives to premixed intravenous solutions;

(II) appropriate storage methods, including storage durations for sterile pharmaceuticals and expirations of self-mixed solutions;

(III) handling and disposition of premixed and self-mixed intravenous admixtures; and

(IV) proper disposition of intravenous admixture compounding supplies such as syringes, vials, ampules, and intravenous solution containers.

(C) Pharmacist-patient relationship. It is imperative that a pharmacist-patient relationship be established and maintained throughout the patient's course of therapy. This shall be documented in the patient's medication record (PMR).

(D) Patient monitoring. The pharmacist-in-charge shall develop policies to ensure that:

(i) the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider;

(ii) the first dose of any new drug therapy is administered in the presence of an individual qualified to monitor for and respond to adverse drug reactions; and

(iii) reports of adverse events with a compounded sterile preparation are reviewed promptly and thoroughly to correct and prevent future occurrences.

(12) Drugs, components, and materials used in sterile compounding.

(A) Drugs used in sterile compounding shall be a USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available shall be of a chemical grade in one of the following categories:

(i) Chemically Pure (CP);

(ii) Analytical Reagent (AR);

(iii) American Chemical Society (ACS); or

(iv) Food Chemical Codex.

(C) If a drug, component or material is not purchased from a FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) All components shall:

(i) be manufactured in an FDA-registered facility; or

(ii) in the professional judgment of the pharmacist, be of high quality and obtained from acceptable and reliable alternative sources; and

(iii) be stored in properly labeled containers in a clean, dry area, under proper temperatures.

(E) Drug preparation containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug preparation beyond the desired result.

(F) Components, drug preparation containers, and closures shall be rotated so that the oldest stock is used first.

(G) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug preparation.

(H) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(13) Compounding process.

(A) Standard operating procedures (SOPs). All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed and implemented for:

(i) the facility;

(ii) equipment;

(iii) personnel;

(iv) preparation evaluation;

(v) quality assurance;

(vi) preparation recall;

(vii) packaging; and

(viii) storage of compounded sterile preparations.

(B) USP/NF. Any compounded formulation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Personnel Cleansing and Garbing.

(i) Any person with an apparent illness or open lesion, including rashes, sunburn, weeping sores, conjunctivitis, and active respiratory infection, that may adversely affect the safety or quality of a drug preparation being compounded shall be excluded from working in ISO Class 5, ISO Class 7, and ISO Class 8 compounding areas until the condition is remedied.

(ii) Before entering the buffer area, compounding personnel must remove the following:

(I) personal outer garments (e.g., bandanas, coats, hats, jackets, scarves, sweaters, vests);

(II) all cosmetics, because they shed flakes and particles; and

(III) all hand, wrist, and other body jewelry or piercings (e.g., earrings, lip or eyebrow piercings) that can interfere with the effectiveness of personal protective equipment (e.g., fit of gloves and cuffs of sleeves).

(iii) The wearing of artificial nails or extenders is prohibited while working in the sterile compounding environment. Natural nails shall be kept neat and trimmed.

(iv) Personnel shall don personal protective equipment and perform hand hygiene in an order that proceeds from the dirtiest to the cleanest activities as follows:

(I) Activities considered the dirtiest include donning of dedicated shoes or shoe covers, head and facial hair covers (e.g., beard covers in addition to face masks), and face mask/eye shield. Eye shields are optional unless working with irritants like germicidal disinfecting agents or when preparing hazardous drugs.

(II) After donning dedicated shoes or shoe covers, head and facial hair covers, and face masks, personnel shall perform a hand hygiene procedure by removing debris from underneath fingernails using a nail cleaner under running warm water followed by vigorous hand washing. Personnel shall begin washing arms at the hands and continue washing to elbows for at least 30 seconds with either a plain (non-antimicrobial) soap, or antimicrobial soap, and water

while in the ante-area. Hands and forearms to the elbows shall be completely dried using lint-free disposable towels, an electronic hands-free hand dryer, or a HEPA filtered hand dryer.

(III) After completion of hand washing, personnel shall don clean non-shedding gowns with sleeves that fit snugly around the wrists and enclosed at the neck.

(IV) Once inside the buffer area or segregated compounding area, and prior to donning sterile powder-free gloves, antiseptic hand cleansing shall be performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations. Hands shall be allowed to dry thoroughly before donning sterile gloves.

(V) Sterile gloves that form a continuous barrier with the gown shall be the last item donned before compounding begins. Sterile gloves shall be donned using proper technique to ensure the sterility of the glove is not compromised while donning. The cuff of the sterile glove shall cover the cuff of the gown at the wrist. When preparing hazardous preparations, the compounder shall double glove or shall use single gloves ensuring that the gloves are sterile powder-free chemotherapy-rated gloves. Routine application of sterile 70% IPA shall occur throughout the compounding day and whenever non-sterile surfaces are touched.

(v) When compounding personnel shall temporarily exit the buffer area during a work shift, the exterior gown, if not visibly soiled, may be removed and retained in the ante-area, to be re-donned during that same work shift only. However, shoe covers, hair and facial hair covers, face mask/eye shield, and gloves shall be replaced with new ones before re-entering the buffer area along with performing proper hand hygiene.

(vi) During high-risk level compounding activities that precede terminal sterilization, such as weighing and mixing of non-sterile ingredients, compounding personnel shall be garbed and gloved the same as when performing compounding in an ISO Class 5 environment. Properly garbed and gloved compounding personnel who are exposed to air quality that is either known or suspected to be worse than ISO Class 7 shall re-garb personal protective equipment along with washing their hands properly, performing antiseptic hand cleansing with a sterile 70% IPA-based or another suitable sterile alcohol-based surgical hand scrub, and donning sterile gloves upon re-entering the ISO Class 7 buffer area.

(vii) When compounding aseptic isolators or compounding aseptic containment isolators are the source of the ISO Class 5 environment, at the start of each new compounding procedure, a new pair of sterile gloves shall be donned within the CAI or CACI. In addition, the compounding personnel should follow the requirements as specified in this subparagraph, unless the isolator manufacturer can provide written documentation based on validated environmental testing that any components of personal protective equipment or cleansing are not required.

(14) Quality Assurance.

(A) Initial Formula Validation. Prior to routine compounding of a sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a preparation that is sterile and that contains the stated amount of active ingredient(s).

(i) Low risk level preparations.

(I) Quality assurance practices include, but are not limited to the following:

(-a-) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality;[.]

(-b-) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments and goggles;[.]

(-c-) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded; and[.]

(-d-) Visual inspection of compounded sterile preparations, except for sterile radiopharmaceuticals, to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually by each person authorized to compound in a low-risk level under conditions that closely simulate the most challenging or stressful conditions encountered during compounding of low-risk level sterile preparations. Once begun, this test is completed without interruption within an ISO Class 5 air quality environment. Three sets of four 5-milliliter aliquots of sterile fluid culture media [~~Soybean-Casein Digest Medium~~] are transferred with the same sterile 10-milliliter syringe and vented needle combination into separate sealed, empty, sterile 30-milliliter clear vials (i.e., four 5-milliliter aliquots into each of three 30-milliliter vials). Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(ii) Medium risk level preparations.

(I) Quality assurance procedures for medium-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations, as well as a more challenging media-fill test passed annually, or more frequently.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually under conditions that closely simulate the most challenging or stressful conditions encountered during compounding. This test is completed without interruption within an ISO Class 5 air quality environment. Six 100-milliliter aliquots of sterile Soybean-Casein Digest Medium are aseptically transferred by gravity through separate tubing sets into separate evacuated sterile containers. The six containers are then arranged as three pairs, and a sterile 10-milliliter syringe and 18-gauge needle combination is used to exchange two 5-milliliter aliquots of medium from one container to the other container in the pair. For example, after a 5-milliliter aliquot from the first container is added to the second container in the pair, the second container is agitated for 10 seconds, then a 5-milliliter aliquot is removed and returned to the first container in the pair. The first container is then agitated for 10 seconds, and the next 5-milliliter aliquot is transferred from it back to the second container in the pair. Following the two 5-milliliter aliquot exchanges in each pair of containers, a 5-milliliter aliquot of medium from each container is aseptically injected into a sealed, empty, sterile 10-milliliter clear vial, using a sterile 10-milliliter syringe and vented needle. Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(iii) High risk level preparations.

(I) Procedures for high-risk level compounded sterile preparations include all those for low-risk level compounded sterile preparations. In addition, a media-fill test that represents high-risk level compounding is performed twice a year by each person authorized to compound high-risk level compounded sterile preparations.

(II) Example of a Media-Fill Test Procedure for Compounded Sterile Preparations Sterilized by Filtration. This test, or an equivalent test, is performed under conditions that closely simulate the most challenging or stressful conditions encountered when compounding high-risk level compounded sterile preparations. Note: Sterility tests for autoclaved compounded sterile preparations are not required unless they are prepared in batches of more than 25 units. This test is completed without interruption in the following sequence:

(-a-) Dissolve 3 grams of non-sterile commercially available fluid culture media [~~Soybean-Casein Digest Medium~~] in 100 milliliters of non-bacteriostatic water to make a 3% non-sterile solution.

(-b-) Draw 25 milliliters of the medium into each of three 30-milliliter sterile syringes. Transfer 5 milliliters from each syringe into separate sterile 10-milliliter vials. These vials are the positive controls to generate exponential microbial growth, which is indicated by visible turbidity upon incubation.

(-c-) Under aseptic conditions and using aseptic techniques, affix a sterile 0.2-micron porosity filter unit and a 20-gauge needle to each syringe. Inject the next 10 milliliters from each syringe into three separate 10-milliliter sterile vials. Repeat the process for three more vials. Label all vials, affix sterile adhesive seals to the closure of the nine vials, and incubate them at 20 to 35 degrees Celsius for a minimum of 14 days. Inspect for microbial growth over 14 days as described in Chapter 797 Pharmaceutical Compounding--Sterile Preparations, of the USP/NF.

(III) Filter Integrity Testing. Filters need to undergo testing to evaluate the integrity of filters used to sterilize high-risk preparations, such as Bubble Point Testing or comparable filter integrity testing. Such testing is not a replacement for sterility testing and shall not be interpreted as such. Such test shall be performed after a sterilization procedure on all filters used to sterilize each high-risk preparation or batch preparation and the results documented. The results should be compared with the filter manufacturer's specification for the specific filter used. If a filter fails the integrity test, the preparation or batch must be sterilized again using new unused filters.

(B) Finished preparation release checks and tests.

(i) All high-risk level compounded sterile preparations that are prepared in groups of more than 25 identical individual single-dose packages (such as ampules[~~ampuls~~], bags, syringes, and vials), or in multiple dose vials for administration to multiple patients, or are exposed longer than 12 hours at 2 - 8 degrees Celsius and longer than six hours at warmer than 8 degrees Celsius before they are sterilized shall be tested to ensure they are sterile and do not contain excessive bacterial endotoxins as specified in Chapter 71, Sterility Tests of the USP/NF before being dispensed or administered.

(ii) All compounded sterile preparations, except for sterile radiopharmaceuticals, that are intended to be solutions must be visually examined for the presence of particulate matter and not administered or dispensed when such matter is observed.

(iii) The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded sterile preparations at all contamination risk levels shall be inspected for accuracy of correct identities and amounts of ingredients, aseptic mixing and sterilization, packaging, labeling, and expected physical appearance before they are dispensed or administered.

(iv) Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation, in accordance with pharmacy's policies and procedures, and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. A pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(C) Environmental Testing.

(i) Viable and nonviable environmental sampling testing. Environmental sampling shall occur, at a minimum, every six months as part of a comprehensive quality management program and under any of the following conditions:

(I) as part of the commissioning and certification of new facilities and equipment;

(II) following any servicing of facilities and equipment;

(III) as part of the re-certification of facilities and equipment;

(IV) in response to identified problems with end products or staff technique; or

(V) in response to issues with compounded sterile preparations, observed compounding personnel work practices, or patient-related infections (where the compounded sterile preparation is being considered as a potential source of the infection).

(ii) Total particle counts. Certification that each ISO classified area (e.g., ISO Class 5, 7, and 8), is within established guidelines shall be performed no less than every six months and whenever the equipment is relocated or the physical structure of the buffer area or ante-area has been altered. All certification records shall be maintained and reviewed to ensure that the controlled environments comply with the proper air cleanliness, room pressures, and air changes per hour. These certification records must include acceptance criteria and be made available upon inspection by the Board. Testing shall be performed by qualified operators using current, state-of-the-art equipment, with results of the following:

(I) ISO Class 5 - not more than 3520 particles 0.5 micrometer and larger size per cubic meter of air;

(II) ISO Class 7 - not more than 352,000 particles of 0.5 micrometer and larger size per cubic meter of air for any buffer area; and

(III) ISO Class 8 - not more than 3,520,000 particles of 0.5 micrometer and larger size per cubic meter of air for any ante-area.

(iii) Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer area and the ante-area and between the ante-area and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 or ISO Class 8 and the general pharmacy area shall not be less than 0.02 inch water column.

(iv) Sampling plan. An appropriate environmental sampling plan shall be developed for airborne viable particles based on a risk assessment of compounding activities performed. Selected sampling sites shall include locations within each ISO Class 5 environment and in the ISO Class 7 and 8 areas and in the segregated compounding areas at greatest risk of contamination. The plan shall include sample location, method of collection, frequency of sampling, volume of air sampled, and time of day as related to activity in the compounding area and action levels.

(v) Viable air sampling. Evaluation of airborne microorganisms using volumetric collection methods in the controlled air environments shall be performed by properly trained individuals for all compounding risk levels. For low-, medium-, and high-risk level compounding, air sampling shall be performed at locations that are prone to contamination during compounding activities and during other activities such as staging, labeling, gowning, and cleaning. Locations shall include zones of air backwash turbulence within the laminar airflow workbench and other areas where air backwash turbulence may enter the compounding area. For low-risk level compounded sterile preparations within 12-hour or less beyond-use-date prepared in a primary engineering control that maintains an ISO Class 5, air sampling shall be performed at locations inside the ISO Class 5 environment and other areas that are in close proximity to the ISO Class 5 environment during the certification of the primary engineering control.

(vi) Air sampling frequency and process. Air sampling shall be performed at least every 6 months as a part of the re-certification of facilities and equipment. A sufficient volume of air shall be sampled and the manufacturer's guidelines for use of the electronic air sampling equipment followed. At the end of the designated sampling or exposure period for air sampling activities, the microbial growth media plates are recovered and their covers secured and they are inverted and incubated at a temperature and for a time period conducive to multiplication of microorganisms. Sampling data shall be collected and reviewed on a periodic basis as a means of evaluating the overall control of the compounding environment. If an activity consistently shows elevated levels of microbial growth, competent microbiology or infection control personnel shall be consulted. A colony forming unit (cfu) count greater than 1 cfu per cubic meter of air for ISO Class 5, greater than 10 cfu per cubic meter of air for ISO Class 7, and greater than 100 cfu per cubic meter of air for ISO Class 8 or worse should prompt a re-evaluation of the adequacy of personnel work practices, cleaning procedures, operational procedures, and air filtration efficiency within the aseptic compounding location. An investigation into the source of the contamination shall be conducted. The source of the problem shall be eliminated, the affected area cleaned, and resampling performed. Counts of cfu are to be used as an approximate measure of the environmental microbial bioburden. Action levels are determined on the basis of cfu data gathered at each sampling location and trended over time. Regardless of the number of cfu identified in the pharmacy, further corrective actions will be dictated by the identification of microorganisms recovered by an appropriate credentialed laboratory of any microbial bioburden captured as a cfu using an impaction air sampler. Highly pathogenic microorganisms (e.g., gram-negative rods, coagulase positive staphylococcus, molds and yeasts) can be potentially fatal to patient receiving compounded sterile preparations and must be immediately remedied, regardless of colony forming unit count, with the assistance, if needed, of a competent microbiologist, infection control professional, or industrial hygienist.

(vii) Compounding accuracy checks. Written procedures for checking compounding accuracy shall be followed for every compounded sterile preparation during preparation and immediately prior to release, including label accuracy and the accuracy of the addition of all drug products or ingredients used to prepare the finished preparation and their volumes or quantities. At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(15) Quality control.

(A) Quality control procedures. The pharmacy shall follow established quality control procedures to monitor the compounding environment and quality of compounded drug preparations for conformity with the quality indicators established for the preparation. When developing these procedures, pharmacy personnel shall consider the provisions of USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding-Non-sterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses, USP Chapter 1160, Pharmaceutical Calculations in Prescription Compounding, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding of the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Verification of compounding accuracy and sterility.

(i) The accuracy of identities, concentrations, amounts, and purities of ingredients in compounded sterile preparations shall be confirmed by reviewing labels on packages, observing and documenting correct measurements with approved and correctly standardized devices, and reviewing information in labeling and certificates of analysis provided by suppliers.

(ii) If the correct identity, purity, strength, and sterility of ingredients and components of compounded sterile preparations cannot be confirmed such ingredients and components shall be discarded immediately. Any compounded sterile preparation that fails sterility testing following sterilization by one method (e.g., filtration) is to be discarded and not subjected to a second method of sterilization.

(iii) If individual ingredients, such as bulk drug substances, are not labeled with expiration dates, when the drug substances are stable indefinitely in their commercial packages under labeled storage conditions, such ingredients may gain or lose moisture during storage and use and shall require testing to determine the correct amount to weigh for accurate content of active chemical moieties in compounded sterile preparations.

(e) Records. Any testing, cleaning, procedures, or other activities required in this subsection shall be documented and such documentation shall be maintained by the pharmacy.

(1) Maintenance of records. Every record required under this section must be:

(A) kept by the pharmacy and be available, for at least two years 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 an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug orders or medication orders. Compounding records for all compounded preparations shall be maintained by the pharmacy and shall include:

(i) the date and time of preparation;

(ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) or official name and name(s) of the manufacturer(s) or distributor of the raw materials and the quantities of each; however, if the sterile preparation is compounded according to the manufacturer's labeling instructions, then documentation of the formula is not required;

(iii) written or electronic signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;

(iv) written or electronic signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting finals checks of compounded pharmaceuticals if pharmacy technicians or pharmacy technician trainees perform the compounding function;

(v) the container used and the number of units of finished preparation prepared; and

(vi) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures.

(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) specific equipment used during preparation; and

(VII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) lot number for each component;

(III) component manufacturer/distributor or suitable identifying number;

(IV) container specifications (e.g., syringe, pump cassette);

(V) unique lot or control number assigned to batch;

(VI) expiration date of batch-prepared preparations;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) finished preparation evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) Office Use Compounding and Distribution of Sterile Compounded Preparations

(1) General.

(A) A pharmacy may compound, dispense, deliver, and distribute a compounded sterile preparation as specified in Subchapter D, Texas Pharmacy Act Chapter 562.

(B) A Class A-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations to a Class C or Class C-S pharmacy.

(C) A Class C-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations that the Class C-S pharmacy has compounded for other Class C or Class C-S pharmacies under common ownership.

(D) To compound and deliver a compounded preparation under this subsection, a pharmacy must:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(E) This subsection does not apply to Class B pharmacies compounding sterile radiopharmaceuticals that are furnished for departmental or physicians' use if such authorized users maintain a Texas radioactive materials license.

(2) Written Agreement. A pharmacy that provides sterile compounded preparations to practitioners for office use or to another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded drugs may only be administered to the patient and may not be dispensed to

the patient or sold to any other person or entity except to a veterinarian as authorized by §563.054 of the Act;

(B) require the practitioner or receiving pharmacy to include on a patient's chart, medication order or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient; and

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of sterile compounded preparations to a practitioner for office use or to an institutional pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) be maintained separately from the records of preparations dispensed pursuant to a prescription or medication order; and

(III) be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the 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.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing 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) Orders. The pharmacy shall maintain a record of all sterile compounded preparations ordered by a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and if applicable, the name, address and phone number of the institutional pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by an institutional pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or institutional pharmacy to whom the preparation is distributed.

(D) Audit Trail.

(i) The pharmacy shall store the order and distribution records of preparations for all sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a pharmacy licensed to compound sterile preparations for administration to a patient in such a manner as to be able to provide an audit trail for all orders and distributions of any of the following during a specified time period:

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the institutional pharmacy, if applicable;

(III) name, strength and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number.

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedures for the recall of any compounded sterile preparation provided to a patient, to a practitioner for office use, or a pharmacy for administration. Written procedures shall include, but not be limited to the requirements as specified in paragraph (3) of this subsection.

(2) The pharmacy shall immediately initiate a recall of any sterile preparation compounded by the pharmacy upon identification of a potential or confirmed harm to a patient.

(3) In the event of a recall, the pharmacist-in-charge shall ensure that:

(A) each practitioner, facility, and/or pharmacy to which the preparation was distributed is notified, in writing, of the recall;

(B) each patient to whom the preparation was dispensed is notified, in writing, of the recall;

(C) the board is notified of the recall, in writing, not later than 24 hours after the recall is issued;

(D) if the preparation is distributed for office use, the Texas Department of State Health Services, Drugs and Medical Devices Group, is notified of the recall, in writing;

(E) the preparation is quarantined; and

(F) the pharmacy keeps a written record of the recall including all actions taken to notify all parties and steps taken to ensure corrective measures.

(4) If a pharmacy fails to initiate a recall, the board may require a pharmacy to initiate a recall if there is potential for or confirmed harm to a patient.

(5) A pharmacy that compounds sterile preparations shall notify the board immediately of any adverse effects reported to the pharmacy or that are known by the pharmacy to be potentially attributable to a sterile preparation compounded by the pharmacy.

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

Filed with the Office of the Secretary of State on June 15, 2018.

TRD-201802674
Allison Vordenbaumen Benz, R. Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-8028

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CHAPTER 295. PHARMACISTS

22 TAC §295.9

The Texas State Board of Pharmacy proposes amendments to §295.9, concerning Inactive License. The amendments, if adopted, add a requirement of one hour of continuing education on opioid abuse for pharmacist license reactivation.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be increased awareness and education on opioid abuse amongst the pharmacist community. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§295.9. Inactive License.

(a) Placing a license on inactive status. A person who is licensed by the board to practice pharmacy but who is not eligible to renew the license for failure to comply with the continuing education requirements of the Act, Chapter 559, Subchapter A, and who is not engaged in the practice of pharmacy in this state, may place the license on inactive status at the time of license renewal or during a license period as follows:[-]

(1) To place a license on inactive status at the time of renewal, the licensee shall:

(A) complete and submit before the expiration date a pharmacist license renewal application provided by the board;

(B) state on the renewal application that the license is to be placed on inactive status and that the licensee shall not practice pharmacy in Texas while the license is inactive; and

(C) pay the fee for renewal of the license as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees).

(2) To place a license on inactive status at a time other than the time of license renewal, the licensee shall:

(A) return the current renewal certificate to the board; [~~and~~]

(B) submit a signed statement stating that the licensee shall not practice pharmacy in Texas while the license is inactive, and the date the license is to be placed on inactive status; and

(C) pay the fee for issuance of an amended license as specified in §295.5(e) of this title (relating to Pharmacist License or Renewal Fees).

(b) Prohibition against practicing pharmacy in Texas with an inactive license. A holder of a license that is on inactive status shall not practice pharmacy in this state. The practice of pharmacy by a holder of a license that is on inactive status constitutes the practice of pharmacy without a license.

(c) Reactivation of an inactive license.

(1) A holder of a license that is on inactive status may return the license to active status by:

(A) applying for active status on a form prescribed by the board;

(B) providing copies of completion certificates from approved continuing education programs as specified in §295.8(e) of this title (relating to Continuing Education Requirements) for 30 hours including at least one contact hour (0.1 CEU) shall be related to Texas pharmacy laws or rules and at least one contact hour (0.1 CEU) shall be related to opioid abuse. Approved continuing education earned within two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement for reactivation of the license but may not be counted toward subsequent renewal of the license; and

(C) paying the fee specified in paragraph (2) of this subsection.

(2) If the application for reactivation of the license is made at the time of license renewal, the applicant shall pay the license renewal fee specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees). If the application for reactivation of the license is made at a time other than the time of license renewal, the applicant shall pay the fee for issuance of an amended license to practice pharmacy as specified in §295.5(e) of this title (relating to Pharmacist License or Renewal Fees).

(3) In an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for pharmacist services, the executive director of the board, in his/her discretion, may allow a pharmacist [~~pharmacists~~] whose license has been inactive for no more than two years to reactivate their license prior to obtaining the required continuing education specified in paragraph (1)(B) of this subsection, provided the pharmacist completes the continuing education requirement within six months of reactivation of the license. If the required continuing education is not provided within six months, the license shall return to an inactive status.

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

Filed with the Office of the Secretary of State on June 15, 2018.

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Allison Vordenbaumen Benz, R.Ph.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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22 TAC §295.11

The Texas State Board of Pharmacy proposes amendments to §295.11, concerning Notification to Consumers. The amendments, if adopted, updates the requirement for pharmacies to post a sign notifying consumers of the Board's contact information for filing complaints regarding the practice of pharmacy, and permits a pharmacy to utilize an electronic messaging system in lieu of such a sign.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be improved visibility and notice of the Board's contact information for filing consumer complaints. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed amendments do not create or eliminate a government program;

(2) Implementation of the proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed amendments do not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed amendments do not require an increase or decrease in fees paid to the agency;

(5) The proposed amendments do not create a new regulation;

(6) The proposed amendments do not limit or expand an existing regulation;

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§295.11. Notification to Consumers.

(a) Pharmacist. Every pharmacist who practices pharmacy other than in a licensed pharmacy shall provide notification to consumers of the name, mailing address, internet site [~~Internet Site~~] address and telephone number of the board for the purpose of directing complaints concerning the practice of pharmacy to the board. Such notification shall be provided as follows.

(1) If the pharmacist maintains an office and provides pharmacy services to patients who come to the office, the pharmacist shall either:

(A) post in a prominent place that is in clear public view where pharmacy services are provided:

(i) a sign [~~furnished by the Texas State Board of Pharmacy~~] which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's mailing address, internet [~~Internet~~] site address, telephone number [~~of the board~~], and [~~if applicable~~] a toll-free telephone number for filing complaints; or

(ii) an electronic messaging system in a type size no smaller than ten-point Times Roman which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, internet site address, and a toll-free number for filing complaints; or

(B) provide to the patient each time pharmacy services are provided a written notification in type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, internet [~~Internet~~] site address, telephone number of the board, and [~~if applicable~~] a toll-free telephone number for filing complaints)."

(2) If the pharmacist provides pharmacy services to patients not at the pharmacist's office, the pharmacist shall provide to the patient each time pharmacy services are provided, a written notification in type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, telephone number of the board, internet [~~Internet~~] site address, and [~~if applicable~~] a toll-free telephone number for filing complaints)." Such notification shall be included:

(A) in each written contract for pharmacist services; or

(B) on each bill for service provided by the pharmacist.

(3) The provisions of this section do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(b) Texas State Board of Pharmacy. On or before January 1, 2005, the board shall establish a pharmacist profile system as specified in §2054.2606, Government Code.

(1) The board shall make the pharmacist profiles available to the public on the agency's internet [~~Internet~~] site.

(2) A pharmacist profile shall contain at least the following information:

(A) pharmacist's name;

(B) pharmacist's license number, licensure status, and expiration date of the license;

(C) name, address, telephone number, and license number of all Texas pharmacies where the pharmacist works;

(D) the number of years the person has practiced in Texas;

(E) professional pharmacy degree held by the licensee, the year it was received, and the name of the institution that awarded the degree;

(F) whether the pharmacist is preceptor;

(G) any speciality certification held by the pharmacist; and

(H) whether the pharmacist has had prior disciplinary action by the board.

(3) The board shall gather this information on initial licensing and update the information in conjunction with the license renewal for the pharmacist.

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

Filed with the Office of the Secretary of State on June 15, 2018.

TRD-201802679
Allison Vordenbaumen Benz, R. Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-8028

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CHAPTER 305. EDUCATIONAL REQUIREMENTS

22 TAC §305.2

The Texas State Board of Pharmacy proposes amendments to §305.2, concerning Pharmacy Technician Training Programs. The amendments, if adopted, clarify the standard for Board-approved pharmacy technician training programs by recognizing that pharmacy technician training programs are jointly accredited by the American Society of Health-System Pharmacists and the Accreditation Council on Pharmacy Education.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide accurate standards for Board-approved pharmacy technician training programs. There is no anticipated impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment.

For each year of the first five years the proposed amendment will be in effect, Ms. Benz has determined the following:

(1) The proposed rule does not create or eliminate a government program;

(2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

(3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

(4) The proposed rule does not require an increase or decrease in fees paid to the agency;

(5) The proposed rule does not create a new regulation;

(6) The proposed rule does not limit or expand an existing regulation;

(7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., July 27, 2018.

The amendments are proposed under §551.002, §554.051, and §562.1011 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.

§305.2. Pharmacy Technician Training Programs.

(a) Purpose. The purpose of this section is to set standards for Board approval of pharmacy technician training programs to ensure that graduates of the programs have the basic knowledge and experience in general pharmacy to practice in most pharmacy settings. Pharmacy technician training programs are not required to be approved by the Board. However, the Board maintains a list of Board-approved pharmacy technician training programs that meet the standards established in this section.

(b) Board-approved pharmacy technician training programs.

(1) The approval by the Board of pharmacy technician training programs do not change any requirements for on-site training required of all pharmacy technicians as outlined in the rules for each class of pharmacy.

(2) The standard for Board-approved pharmacy technician training programs shall be the American Society of Health-System Pharmacists' and Accreditation Council on Pharmacy Educations' (ASHP/ACPE) Accreditation Standards [~~Accreditation Standard~~] for Pharmacy Technician Education and Training Programs which are based on goals specified in ASHP's Model Curriculum for Pharmacy Technician Education and Training Programs.

(3) The Board may approve pharmacy technician training programs which are currently ASHP/ACPE accredited [~~by the American Society of Health-System Pharmacists~~], and maintain such accreditation.

(4) The Board may approve pharmacy technician training programs not accredited by ASHP/ACPE [~~the American Society of Health-System Pharmacists~~] provided:

(A) the program meets ASCHP/ACPE [~~the American Society of Health-System Pharmacists'~~] Accreditation Standards [~~Standard~~] for Pharmacy Technician Education and Training Programs, modified as follows:

(i) entities providing the pharmacy technician training programs are not required to be health care organizations or academic institutions;

(ii) entities that offer or participate in offering pharmacy technician training programs are not required to be accredited by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, or the National Committee on Quality Assurance; and

(iii) students enrolled in pharmacy technician training programs must have a high school or equivalent diploma, e.g., GED, or they may be currently enrolled in a program which awards such a diploma;

(B) the program:

(i) makes an application to the Board;

(ii) provides all information requested by the Board, necessary to confirm that the program meets the requirements outlined in subparagraph (A) of this paragraph;

(iii) assists with any inspections requested by the Board of the facilities, records, and/or program [~~programs~~] guidelines necessary to confirm that the program meets the requirements outlined in subparagraph (A) of this paragraph; and

(iv) pays an application processing fee to the Board of $100.00;

(C) the program director provides written status reports upon request of the Board and at least every three years to assist in evaluation of continued compliance with the requirements; and

(D) the program is subject to an on-site inspection at least every six years.

(5) The Board may require an outside entity to conduct any evaluations and/or inspections of a pharmacy technician training program as outlined in paragraph (4) of this subsection. This outside entity shall report to the Board whether a pharmacy technician training program meets the ASHP/ACPE [~~American Society of Health-System Pharmacists'~~] Accreditation Standards for Pharmacy Technician Education and Training Programs as modified. Cost of these evaluations shall be the responsibility of the pharmacy technician training program.

(c) Students enrolled in [~~a~~] Board-approved pharmacy technician training programs. A student enrolled in a Board-approved pharmacy technician training program must be registered as a pharmacy technician trainee or pharmacy technician prior to working in a pharmacy as part of the experiential component of the Board-approved pharmacy technician training program.

(d) Review of accreditation standards. The Board shall review the ASHP/ACPE [~~American Society of Health-System Pharmacists'~~] Accreditation Standard for Pharmacy Technician Education and Training Programs periodically and whenever the Standard is revised.

(e) Listing of Board-approved Pharmacy Technician Training Programs. The Board shall maintain a list of the pharmacy technician training programs approved by the Board and periodically publish this list in the minutes of the Board. If the Board determines that a training program does not meet or no longer meets any of the requirements set forth in this section, the training program will not be listed as a Board-approved pharmacy technician training program.

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

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Allison Vordenbaumen Benz, R.Ph.
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Texas State Board of Pharmacy
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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.11, Licensed Psychologists. The proposed amendment is needed to remove superseded language from the rule and thereby avoid confusion. The amendment will also incorporate the substance of Board rule §463.13, and provide an alternative solution for scenarios where the Director of Internship Training is unavailable due to death, disability, or discontinuance of the program, or he or she simply cannot be located. Lastly, the amendment will clarify the internship requirement for full licensure, and ensure that LSSPs may use their title in both public and private schools when acquiring the supervised experience needed for full licensure.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be virtually no additional economic costs to persons required to comply with this rule. Subsection (c)(3) of the proposed rule amendment will require applicants that are actively licensed in another jurisdiction to submit a self-query report from the National Practitioner Data Bank (NPDB) regarding any past disciplinary history. Currently NPDB charges $4.00 per self-query. Unfortunately, the Board does not have a way to identify the total number of individuals that will be affected, e.g. the amount of out-of-state applications the Board receives each year, but the Board estimates that the amount of people affected by this change to be small because the Board receives more applications from applicants who are not licensed in other jurisdictions than it does from applicants licensed in other jurisdictions. Mr. Spinks has determined that the $4.00 charge for an NPDB self-query will only apply to a small amount of applicants, which could result in an increase in costs for those applicants, but will be so nominal that there will be no practical change in the economic cost to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't. Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't. Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't. Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it incorporates the regulations from Board rule §463.13; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't. Code §2007.043.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't. Code.

Statutory Authority. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

Board rule §463.13 will be affected by this proposal. No other code, articles or statutes are affected by this section.

§463.11. Licensed Psychologists.

(a) Application Requirements. An application for licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of current licensure as a provisionally licensed psychologist in good standing.

(2) Documentation of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal internship should [~~must~~] be documented by the Director of Internship Training when possible, but may be documented by a licensed psychologist with knowledge of the internship program and the applicant's participation in the internship program if the Director of Internship Training is unavailable.

(3) Documentation of licensure in other jurisdictions, including information on disciplinary action and pending complaints, sent directly to the Board.

(b) Degree Requirements. The degree requirements for licensure as a psychologist are the same as for provisional licensure as stated in Board rule §463.10 of this title (relating to Provisionally Licensed Psychologist).

(c) An applicant who is actively licensed as a psychologist in another jurisdiction, and who meets each of the following requirements, is considered to have met the requirements for supervised experience under this rule:

(1) The applicant must be actively licensed as a provisionally licensed psychologist with no restrictions on his or her license.

(2) The applicant must affirm that he or she has received at least 3,000 hours of supervised experience from a licensed psychologist in the jurisdiction where the supervision took place. At least half of those hours (a minimum of 1,500 hours) must have been completed within a formal internship, and the remaining one-half (a minimum of 1,500 hours) must have been completed after the doctoral degree was conferred or completed; and

(3) The applicant must submit a self-query report from the National Practitioner Data Bank (NPDB) reflecting no disciplinary history, other than disciplinary history related to continuing education or professional development. The report must be submitted with the application in the sealed envelope in which it was received from the NPDB.

[~~(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years.~~]

[~~(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:~~]

[~~(A) Experience may be obtained only in either a full-time or half-time setting.~~]

[~~(B) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than 12 consecutive calendar months in not more than two placements.~~]

[~~(C) A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements.~~]

[~~(D) A year of full-time experience may be acquired through a combination of half-time and full-time employment/experience provided that the equivalent of a full-time year of supervision experience is satisfied.~~]

[~~(E) One calendar year from the beginning of ten consecutive months of employment/experience in an academic setting constitutes one year of experience.~~]

[~~(F) When supervised experience is interrupted, the Board may waive upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months. Any consecutive experience obtained before or after the gap must be at least six months unless the supervisor remains the same. Waivers for such gaps are rarely approved and must be requested in writing and include sufficient documentation to permit verification of the circumstances supporting the request. No waiver will be granted unless the Board finds that the supervised experience for which the waiver is sought was adequate and appropriate. Good cause is defined as:~~]

[~~*(i)* unanticipated discontinuance of the supervision setting,~~]

[~~*(ii)* maternity or paternity leave of supervisee,~~]

[~~*(iii)* relocation of spouse or spousal equivalent,~~]

[~~*(iv)* serious illness of the supervisee, or serious illness in supervisee's immediate family.~~]

[~~(G) A rotating internship organized within a doctoral program is considered to be one placement.~~]

[(H) The experience requirement must be obtained after official enrollment in a doctoral program.]

[(I) All supervised experience must be received from a psychologist licensed at the time supervision is received.]

[(J) The supervising psychologist must be trained in the area of supervision provided to the supervisee.]

[(K) No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered.]

[(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.]

[(M) Experience received from a psychologist while the psychologist is practicing subject to an Agreed Board Order or Board Order shall not, under any circumstances, qualify as supervised experience for licensure purposes regardless of the setting in which it was received. Psychologists who become subject to an Agreed Board Order or Board Order shall inform all supervisees of the Agreed Board Order or Board Order and assist all supervisees in finding appropriate alternate supervision.]

[(N) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a provisionally licensed psychologist or a licensed psychological associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a licensed specialist in school psychology may use his or her title so long as the supervised experience takes place within the public schools, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologists and specialist in school psychology. Use of a different job title is permitted only if the supervisee is providing services for a government facility or other facility exempted under §501.004 of the Act (Applicability) and the supervisee is using a title assigned by that facility.]

[(O) The supervisee and supervisor must inform those receiving psychological services as to the supervisory status of the individual and how the patient or client may contact the supervising licensed psychologist directly.]

[(2) Formal Internship. At least one year of experience must be satisfied by one of the following types of formal internship:]

[(A) The successful completion of an internship program accredited by the American Psychological Association (APA); or]

[(B) The successful completion of an organized internship meeting all of the following criteria:]

[(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.]

[(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.]

[(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.]

[(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.]

[(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.]

[(vi) At least 25% of trainee's time must be in direct patient/client contact (minimum 375 hours).]

[(vii) The internship must include a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.]

[(viii) Training must be post-clerkship, post-practicum and post-externship level.]

[(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.]

[(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work; or]

[(C) The successful completion of an organized internship program in a school district meeting the following criteria:]

[(i) The internship experience must be provided at or near the end of the formal training period.]

[(ii) The internship experience must occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.]

[(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.]

[(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.]

[(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.]

[(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.]

[(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.]

[(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.]

~~*[(ix)* The internship site shall inform interns concerning the period of the internship and the training objectives of the program.]~~

~~*[(x)* The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.]~~

~~*[(xi)* The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.]~~

~~*[(xii)* The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.]~~

~~*[(xiii)* The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.]~~

~~[(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement and must complete two full years of supervised experience, at least one of which must be received after the doctoral degree is conferred and both of which must meet the requirements of paragraph (1) of this subsection. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which he or she does not have sufficient training and experience, of which a formal internship year is considered to be an integral requirement.]~~

(d) Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been received after obtaining either provisional trainee status or provisional licensure, and at least 1,750 of which must have been obtained through a formal internship that occurred within the applicant's doctoral degree program. [~~prior to conferral of the doctoral degree.~~] Following the conferral of a doctoral degree, 1,750 hours obtained or completed while employed in the delivery of psychological services in an exempt setting; while licensed or authorized to practice in another jurisdiction; or while practicing as a psychological associate or specialist in school psychology in this state may be substituted for the minimum of 1,750 hours of supervised experience required as a provisional trainee or provisionally licensed psychologist if the experience was obtained or completed under the supervision of a licensed psychologist. Post-doctoral supervised experience obtained prior to September 1, 2016 may also be used to satisfy, either in whole or in part, the post-doctoral supervised experience required by this subsection if the experience was obtained under the supervision of a licensed psychologist.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(B) Gaps Related to Supervised Experience.

(i) Unless a waiver is granted by the Board, an application for a psychologist's license will be denied if a gap of more than 2 years exists between:

(I) the date an applicant's doctoral degree was officially conferred and the date the applicant began obtaining their hours of supervised experience under provisional trainee status or provisional licensure; or

(II) the completion date of an applicant's hours of supervised experience acquired as a provisional trainee or provisionally licensed psychologist, and the date of application.

(ii) The Board shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

(I) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Act, during any gap period;

(II) proof of annual professional development, which at a minimum meets the Board's professional development requirements, during any gap period;

(III) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

(IV) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(C) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(D) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(E) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(F) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(G) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(H) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(I) Unless authorized by the Board, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(J) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use his or her title so long as the supervised experience takes place within a school, the public schools, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted

only if authorized under §501.004 of the Psychologists' Licensing Act, or another Board rule.

(2) Formal Internship. The formal internship hours must be satisfied by one of the following types of formal internships:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact.

(vii) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete 3,500 hours of supervised experience meeting the requirements of paragraph (1) of this subsection, at least 1,750 of which must have been received as a provisional trainee or provisionally licensed psychologist. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(4) Licensure Following Retraining.

(A) In order to qualify for licensure after undergoing retraining, an applicant must demonstrate the following:

(i) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing retraining;

(ii) completion of a formal, accredited post-doctoral retraining program in psychology which included at least 1,750 hours in a formal internship;

(iii) retraining within the two year period preceding the date of application for licensure under this rule, or continuous employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act since receiving their doctoral degree; and

(iv) upon completion of the retraining program, at least 1,750 hours of supervised experience after obtaining either provisional trainee status or provisional licensure.

(B) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

~~[(e) Effective Date of Change Regarding Supervised Experience. Subsection (d), along with all of its subparts, shall take effect, supersede, and take the place of subsection (c) on September 1, 2017.]~~

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

Filed with the Office of the Secretary of State on June 15, 2018.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.13

The Texas State Board of Examiners of Psychologists proposes the repeal of Board rule §463.13, Requirements for Licensed Out-of-State Applicants. The proposed repeal is necessary because the requirements of this rule have been incorporated into Board rule §463.11.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the repeal of the rule. Additionally, Mr. Spinks has determined that enforcing or administering the repeal of the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be a benefit to licensees and the general public because the proposed repeal will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal of the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with the repeal of the rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed repeal will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't. Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed repeal will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to Tex. Gov't. Code §2001.022.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed repeal does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Tex. Gov't. Code §2001.0045, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed repeal is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed repeal is in effect, the Board estimates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand or repeal an existing regulation, since the existing regulation is being incorporated into Board rule 463.11; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed repeal. Thus, the Board is not required to prepare a takings impact assessment pursuant to Tex. Gov't. Code §2007.043.

Request for Public Comments. Comments on the proposed repeal may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative meth-

ods of achieving the purpose of the repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't. Code.

Statutory Authority. The repeal is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this repeal pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

Board rule §463.11 will be affected by this proposed repeal. No other code, articles or statutes are affected by this section.

§463.13. Requirements for Licensed Out-of-State Applicants.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.15

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §465.15, Fees and Financial Arrangements. The proposed change is necessary to ensure the Board's rule governing fees and billing comports with the billing authority set forth in §501.351(b) of the Psychologists' Licensing Act.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees and the general public because the proposed rule amendment will provide greater clarity in the Board's rules and promote greater consistency with the Psychologists' Licensing Act. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't. Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't. Code.

Requirement for Rules Increasing Costs to Regulated Persons.

The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to §2001.0045 of the Tex. Gov't. Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand or repeal an existing regulation, it amends and clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't. Code.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small busi-

nesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't. Code .

Statutory Authority. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles, or statutes are affected by this section.

§465.15. Fees and Financial Arrangements.

(a) General Requirements.

(1) Before the provision of any services, the licensee and the recipient of psychological services reach an agreement specifying the compensation and billing arrangements.

(2) If services are not paid for as agreed, the licensee shall not utilize a collection agency or legal measures to collect any unpaid fees unless the licensee has provided the affected party with at least 30 days written notice, separate and apart from any notice provided as part of the informed consent process, that such measures will be taken and the party has been provided with a reasonable opportunity to make prompt payment.

(3) Licensees shall not withhold records solely because payment has not been received unless specifically permitted by law.

(4) In reporting their services to third-party payers, licensees accurately state the nature, date and fees for the services provided. [~~, and the identity of the person(s) who actually provided the services.~~]

(b) Ethical and Legal Requirements.

(1) Licensees do not engage in fraudulent billing.

(2) Licensees do not misrepresent their fees.

(3) Licensees do not overcharge or otherwise exploit recipients of services or payers with respect to fees.

(4) Licensees do not receive payments from or divide fees with another health care provider in exchange for professional referrals.

(5) A licensee does not participate in bartering if it is clinically contra-indicated or if bartering has the potential to create an exploitative or harmful dual relationship.

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

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Darrel D. Spinks
Executive Director
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For further information, please call: (512) 305-7700

22 TAC §465.22

The Texas State Board of Examiners of Psychologists proposes an amendment to Board rule §465.22, Psychological Records, Test Data and Test Materials. The proposed amendment is necessary to reflect a licensee's ability to withhold psychotherapy notes under §181.102 of the Health and Safety Code.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to Tex. Gov't. Code §2006.002.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't. Code.

Requirement for Rules Increasing Costs to Regulated Persons.

The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to Section 2001.0045 of the Tex. Gov't. Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and

because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't. Code.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Section 2006.002(c) and (c-1) of the Tex. Gov't. Code.

Statutory Authority. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles, or statutes are affected by this section.

§465.22. Psychological Records, Test Data and Test Materials.

(a) General Requirements.

(1) All licensees shall create and maintain accurate, current, and pertinent records of all psychological services rendered by or under the supervision of the licensee.

(2) All records shall be sufficient to permit planning for continuity in the event that another care provider takes over delivery of services to a patient or client for any reason, including the death, disability or retirement of the licensee and to permit adequate regulatory and administrative review of the psychological service.

(3) All licensees shall identify impressions and tentative conclusions as such in patient or client records.

(4) All records and record entries shall be created in as timely a manner as possible after the delivery of the specific services being recorded.

(5) Records shall be maintained and stored in a way that permits review and duplication.

(6) Licensees working in public school settings shall comply with all federal and state laws relative to the content, maintenance, control, access, retention and destruction of psychological and educational records, test data and test protocols.

(7) Licensees are prohibited from falsifying, altering, fabricating, or back-dating records and reports.

(b) Maintenance and Control of Records.

(1) Licensees shall maintain records in a manner that protects the confidentiality of all services delivered by the licensee.

(2) Licensee are responsible for the contents of, as well as the access, retention, control, maintenance, and destruction of all records unless stated otherwise by law.

(3) Licensees shall make all reasonable efforts to protect against the misuse of any record.

(4) Licensees shall maintain control over records to the extent necessary to ensure compliance with all applicable state and federal laws.

(5) In situations where it becomes impossible for a licensee to maintain control over records as required by state or federal law, the licensee shall make all necessary arrangements for transfer of the licensee's records to another licensee who will ensure compliance with state and federal laws concerning records.

(6) The possession, access, retention, control, maintenance, and destruction of records of psychological services rendered by a licensee as an employee of or contractor for an agency or organization remain the responsibility of that agency or organization upon termination of the licensee's employment or contract unless otherwise required by state or federal law or legal agreement.

(c) Access to Records.

(1) Records shall be entered, organized and maintained in a manner that facilitates their use by all authorized persons.

(2) Records may be maintained in any media that ensure confidentiality and durability.

(3) A licensee shall release information about a patient or client only upon written authorization from the patient or client, or as otherwise permitted or required under state or federal law.

(4) Test materials are not part of a patient's or client's record and may not be copied or distributed without the permission of the test publisher unless otherwise permitted under state and federal law. A licensee who is served with a subpoena requiring production of test materials should take reasonable steps to notify and provide the test publisher with a copy of the subpoena as promptly as possible, but may not produce test materials in response to a subpoena without the test publisher's permission or a court order.

(5) Test data are part of a patient's records and must be released to the patient as part of the patient's records. In the event test data are commingled with test materials, licensees may inquire whether the patient will accept a summary or narrative of the test data in lieu of having to either redact the test materials or extract the test data from test materials in order to comply with the request for records.

(6) Licensees cooperate in the continuity of care of patients and clients by providing appropriate information to succeeding qualified service providers as permitted by applicable Board rule and state and federal law.

(7) Licensees who are temporarily or permanently unable to practice psychology shall implement a system that enables their records to be accessed in compliance with applicable Board rules and state and federal law.

(8) Access to records may not be withheld due to an outstanding balance owed by a client for psychological services provided prior to the patient's request for records. However, licensees may impose a reasonable fee for review and/or reproduction of records and are not required to permit examination until such fee is paid, unless there is a medical emergency or the records are to be used in support of an application for disability benefits.

(9) No later than 15 days after receiving a written request from a patient to examine or copy all or part of the patient's mental health records, a psychologist shall:

(A) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(B) inform the patient in writing that the information does not exist or cannot be found; or

(C) when withholding information, provide the patient with a signed and dated statement reflecting the licensee's determination, based upon the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the patient or another person. The written statement must specify the portion of the record being withheld, the reason for denial and the duration of the denial.

(10) A licensee may, but is not required to provide a patient with access to psychotherapy notes, as that term is specifically defined in 45 C.F.R. §164.501, maintained by the licensee concerning the patient.

(d) Retention of Records.

(1) Licensees shall comply with all applicable laws, rules and regulations concerning record retention.

(2) In the absence of applicable state and federal laws, rules and regulations, records and test data shall be maintained for a minimum of seven years after termination of services with the patient, client or subject of evaluation, or three years after a patient or subject of evaluation reaches the age of majority, whichever is greater.

(3) All records shall be maintained in a manner which permits timely retrieval and production.

(e) Outdated Records.

(1) Licensees take reasonable steps when disclosing records to note information that is outdated.

(2) Disposal of records shall be done in an appropriate manner that ensures confidentiality of the records in compliance with applicable Board rules and state and federal laws.

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

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Darrel D. Spinks
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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (TBPG) proposes new rules and amendments concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes new rules 22 TAC §851.22, regarding Waivers and Substitutions: Policy, Procedures, and Criteria; and §851.85, regarding Contingent Emergency/Disaster Response Actions. TBPG also proposes amendments to 22 TAC §§851.10, 851.20 - 851.25, 851.28 - 851.30, 851.32, 851.40, 851.41, 851.43, 851.80, 851.101, 851.103, 851.104, 851.106, 851.109, 851.111 - 851.113, 851.156, 851.158, 851.203, 851.204, concerning clarification and refinement of its rules as a result of its recent four-year rule review.

BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

TBPG conducted its four-year rule review in 2018 and, as a result of the review process, now proposes some changes to its rules.

TBPG proposes new rule 22 TAC §851.22 to establish guidelines for applicants requesting a waiver or substitution of a licensing requirement. New subsection (a) provides an introduction; cites the authority of the TBPG to grant certain waivers in Texas Occupations Code, §1002.259; specifies that an applicant seeking a waiver must submit a copy of "REQUEST FOR WAIVER OF LICENSING REQUIREMENT BOARD POLICY AND PROCEDURES", along with supporting documentation; and specifies that the complete waiver request will be scheduled for review at the next available Committee meeting. New subsection (b) provides guidance that in accordance with TOC §1002.259, an approval of a waiver request requires a vote of 2/3 of the TBPG Appointed Board (6 affirmative votes), regardless of the number of Board members in attendance and that a request for the substitution of experience for education (provided by TOC 1002.255(b)) requires a simple majority vote of a quorum of the TBPG Appointed Board to be approved. New subsection (c) describes elements of the TBPG's Application Review And Continuing Education Committee's review of a request for a waiver or substitution, detailing that the Committee will review the request and supporting documentation and recommend to the full TBPG Board whether or not to grant the requested waiver; that an applicant should provide a written justification, along with supporting documentation; that an applicant may also appear before the Committee and the full Board to provide testimony to support

the request; that all requests the Committee recommends for approval will be scheduled for review by the full Board; and that requests the Committee does not recommend for approval will not be submitted to the full board for review, unless the applicant requests review by the full Board in writing. New subsection (d) provides that TBPG's Appointed Board will review requests the Committee recommends for approval and supporting documentation and will determine whether or not to approve the request (grant the requested waiver). New subsection (d) also provides that an applicant whose request for a waiver or substitution was denied and who believes that there is additional information that was not available to the Board when it reviewed the request, may submit additional information to staff regarding the current application, along with a written request that the Board reconsider the request; that if staff determines that new information has been submitted that may be relevant to the Board's review of an application/request, then staff will schedule the application/waiver request for reconsideration; and that in the review of a request to reconsider its decision on an application/waiver request, the Board will first determine by a simple majority vote whether to reconsider the application/waiver request, based on whether relevant new information has been submitted; that if the Board were to determine by vote that the new information warrants reconsideration of an application/waiver request, the Board would then reconsider the waiver request, including all of the new information available at that time; that an applicant may appear before the Board and present information related to the request; and, that the Board will reconsider its decision on a waiver request only once. New subsection (e) outlines the specific Examination Waiver Requirements and Criteria. New subsection (f) provides minimum requirements for an applicant requesting a Substitution of Work Experience for Educational Requirements. New subsection (g) provides criteria for the Waiver of Education Requirement. New subsection (h) provides specific guidelines for an Education Waiver for a license in the Geology discipline as it relates to a request to sit for the ASBOG® Fundamentals examination and specifies that an individual who plans to apply for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Fundamentals of Geology examination as long as the applicant meets the specified requirements. New subsection (i) provides specific criteria for an Education Waiver for a license in Geology discipline as it relates to a request to sit for the ASBOG® Practice Examination and specifies that an applicant for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Practice of Geology examination as long as the applicant meets the specified requirements. New subsection (j) provides for an Education Waiver for a license in the Geophysics discipline as it relates to a request to sit for the Texas Geophysics Examination and an applicant for licensure as a Professional Geoscientist in the discipline of geophysics who does not fully meet the education requirement for licensure may take the Texas Geophysics Examination as long as the applicant meets specified requirements.

TBPG proposes new rule 22 TAC §851.85, which provides for the Executive Director to implement one or more temporary actions in an emergency or disaster situation, when an emergency or disaster has been proclaimed by the Governor, and when such temporary actions are warranted. The Executive Director is required to consult with the Board Chairman before implementing any measures. Actions that may be implemented include extending the expiration dates of certain license types, the temporary suspension of certain fees, temporarily suspending continuing education requirements or extending the deadline for those requirements, and issuing emergency non-renewable Professional Geoscientist licenses, valid for no more than a year, to qualified individuals. The proposed rule specifies that any actions taken under this provision would be communicated to all members of the Board, all affected license holders, and the general public, as soon as it is feasible to do so. Additionally, such actions taken under this rule would be effective only until the next regular or special meeting of the Board, at which time, the Appointed Board will review all actions taken and act to either continue the actions for a specified amount of time, with or without modifications, or to discontinue such actions taken under this section.

TBPG proposes an amendment to 22 TAC §851.10 to clarify definitions. The proposed change to §851.10(4) clarifies that the term, "Advertising or Advertisement" refers to any non-commercial or commercial message, including, but not limited to verbal statements, bids, web pages, signage, provider listings, and paid advertisements that promotes "geoscience services," as opposed to "the services of a licensee," which, sometimes may not be "geosciences services." An added definition for "meritless complaint" is proposed as new §851.10(30), defining "meritless complaint" as "a complaint in which the allegations are unfounded or groundless (no legitimate basis for the allegation) or the allegations are unsubstantiated or unverified (no determination could be made as to whether there was any basis for the allegation). An added definition for "non-jurisdictional complaint" is proposed as new §851.10(31), defining "non-jurisdictional complaint" as "a complaint in which the TBPG has no jurisdiction over the alleged conduct. Current §851.10(30) - 851.10(41) are reordered as necessary by the above changes.

TBPG proposes amendments to 22 TAC §851.20 to provide clarification to the existing requirement in §851.20(d)(7) that applicants must submit verification of every license, current or expired, in any regulated profession related to the public practice of geoscience in any jurisdiction by adding, in parenthesis, examples of such licenses, "(for example, Professional Engineer, licensed Water Well Driller, etc.)". Proposed changes elsewhere in §851.20 address the use of the terms "license certificate expiration cards" and "wallet license expiration cards" for consistency in the use of words to identify the two cards, removing or adding words, as necessary to accurately refer to each these items in the context in which the terms are used. Proposed amendment to 22 TAC §851.20(l) substitutes the term "new" for "original" in reference to the first license certificate issued to a new licensee because it is simply a newly printed license certificate.

TBPG proposes an amendment to 22 TAC §851.21(f) to specify that an applicant requesting a waiver from any examination(s) must complete a Waiver Request (Form VI) and must comply with §851.22 regarding waivers and substitutions. Proposed change to §851.21(g)(2)(B)(i) removes the term "initial" in reference to an application for PG licensure because the rule applies to any application for PG licensure. Proposed change to §851.21(g)(3)(B)(i) improves language by removing the term "both" and replacing it with the word "an," in reference to the items an applicant for licensure in the discipline of geophysics must submit under the procedures described in that section. §851.21 (h), (i), and (j), describing the processes for applicants who do not fully meet the education requirement, are proposed for deletion from §851.21 (and proposed for inclusion in new §851.22, pertaining to Waivers and Substitutions), because the processes would be better organized in new §851.22.

TBPG proposes an amendment to 22 TAC §851.23(g) to clarify that qualifying experience includes, "research in or the teaching of a discipline of geoscience at the college or university level as qualifying work experience if the research or teaching, in the judgment of TBPG, is comparable to work experience obtained in the practice of geoscience." TBPG also proposes a new subsection (h), which provides that the experience required for licensure should not be waived and that the Appointed Board does not offer waiver of the experience requirement for licensure.

TBPG proposes an amendment to 22 TAC §851.24 to clarify the wording related to the requirement that Professional Geoscientists who provide references that are licensed in a jurisdiction other than Texas shall include a copy of the "wallet license expiration card," substituting the term "wallet license expiration card" for "pocket card." Proposed language also removes the word "initial" when referring to the Application for P.G. Licensure (Form A) as the word is unnecessary.

TBPG proposes an amendment to 22 TAC §851.25 to change the title of the section from "Education" to "Education Requirements and Equivalents." The amendment adds the words "Educational Equivalent" at the beginning of subsection (b) to serve as a subsection heading.

TBPG proposes an amendment to 22 TAC §851.28 to add a close parenthesis in subsection (g).

TBPG proposes an amendment to 22 TAC §851.29(b)(3)(D), which adds the requirement of "verification of having met the education requirement for licensure" to the list of required verifications listed in the subsection that an applicant requesting licensure by recognition of licensed experience in another jurisdiction must submit in order to be deemed to have met the examination requirement. It also re-numbers the subsequent subsections of the rule accordingly.

TBPG proposes an amendment to 22 TAC §851.30 to remove the words "an initial" when referring to the Firm Registration Application (Form C) in subsection (d)(6) because the term "an initial" does not apply; it also adds the word "expiration" when referring to the portable firm registration expiration card in subsection (g) for clarity; and in subsection (i), the proposed amendment removes the phrase "unless certain allegations of misconduct are present," because a geoscience firm would normally be renewed even if a complaint was pending because TBPG would only deny a geoscience firm renewal by a Board order.

TBPG proposes an amendment to 22 TAC §851.32 to improve language and clarify the requirements of the continuing education program. Proposed changes remove the outdated graphic in subsection (k); add language in subsection (m)(2) to clarify current procedures such that if Board staff find that the activities cited by the licensee do not fall within the bounds of qualifying activities related to the practice of geoscience, staff shall determine that the continuing education audit was not passed and refer the issue to the Enforcement Coordinator for appropriate action, which may include opening a complaint against the licensee for potential violations. Proposed language also clarifies subsection (o) by referring to professional development hours earned by the defined term "PDH" instead of "units" or "hours."

TBPG proposes an amendment to 22 TAC §851.40 to remove the word "initial" when referring to the Application for P.G. Licensure because the term does not apply, and corrects punctuation used in the sentence.

TBPG proposes an amendment to 22 TAC §851.41 to remove the word "initial" when referring to the GIT Certification Application because the term does not apply, and adds new subsection (c), providing that an applicant who has been granted an exemption from an examination described by §851.41(a) is not eligible to become a GIT.

TBPG proposes an amendment to 22 TAC §851.43 to replace the word "Personal" with "Professional" when referring to Professional Development Hours in subsection (b)(2), and add new subsection (c) to provide that upon the first renewal of a GIT certification, the GIT is exempt from the continuing education requirement.

TBPG proposes an amendment to 22 TAC §851.80 to remove the word "initial" when referring to the P.G. application and license fee because the term is not applicable. The proposed amendment provides clarification that the fee specified in subsection (e) is for issuance of a revised or duplicate license "wall certificate." The term "initial" is removed from new subsections (l) and (o) because the term is not applicable.

TBPG proposes an amendment to 22 TAC §851.101 to remove the "Authorized Official of a Firm (AOF)" from the list of individuals or entities who are responsible for understanding and complying with the Act, or TBPG rules, or any other law or rule pertaining to the practice of professional geoscience. Proposed changes also replace "AOF" with "a Geoscience Firm" in subsections (c) and (d) to clarify that the requirements to cooperate with the TBPG and respond to inquiries from the TBPG apply to a registered Geoscience Firm, rather than the "Authorized Official of the Firm." Proposed changes to §851.101 adds to the current requirement that licensees shall respond to all requests and inquiries concerning matters under the jurisdiction of the TBPG, adding that licensees shall do so "timely." Subsection (g) removes "a Geoscientist-in-Training" from the list of licensees who may donate geosciences services to charitable causes because certification as a Geoscientist-in-Training does not authorize the non-exempt public practice of geoscience or the provision of professional geoscience services.

TBPG proposes an amendment to 22 TAC §851.103(b)(2)(3). The current rule provides in subsection (b)(2), that recklessness shall include the practice of, "Knowing failure to exercise ordinary care and attention toward the intended result when a procedure, technique, material, or system is employed as a result of a decision made by the Professional Geoscientist or Geoscience Firm and such failure jeopardizes public health, safety, or welfare." The proposed amendment adds that such knowing failure is recklessness if it jeopardizes or has the potential to jeopardize public health, safety, or welfare. Similarly, subsection (b)(3), provides that recklessness shall include the practice of, "Action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to the design or construction of a particular project when such disregard jeopardizes public health, safety, or welfare." The proposed amendment adds that such action described in the paragraph is also reckless if it has "the potential to jeopardize public health, safety or welfare."

TBPG proposes an amendment to 22 TAC §851.104 to specify in subsection (c) that a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific "government" funded geoscience services, replacing the word "publicly" with "government" to provide clarification to the rule.

Also, in subsection (g) the word "which" is replaced by "that" to improve wording.

TBPG proposes an amendment to 22 TAC §851.106 to add to the current requirement that a reference provider must respond to the TBPG in writing regarding an applicant's qualification when requested to do so, adding that the reference provider must do so "timely."

TBPG proposes an amendment to 22 TAC §851.109. Section 851.109(b) currently provides that a Professional Geoscientist's abuse of alcohol or a controlled substance that results in the impairment of the Professional Geoscientist's professional skill so as to cause or to have caused a threat to the property, safety, health, or welfare of the public may be deemed "Gross Incompetency" and may be grounds for revocation or suspension of a Professional Geoscientist's license or other appropriate disciplinary actions provided by the Act. The proposed change would provide that a Professional Geoscientist's abuse of alcohol or a controlled substance that results in the impairment of the P.G.'s professional skill so as to cause or "potentially cause" a threat to property, safety, health, or welfare of the public may be deemed as "Gross Incompetency," and may be grounds for disciplinary action.

TBPG proposes an amendment to 22 TAC §851.111. Currently subsection (a) provides that "A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law, rule or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety or welfare of the public." The proposed change would provide that, "A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law, rule or court order; or when those confidences, if left undisclosed, would constitute a threat or a potential threat to the health, safety or welfare of the public."

TBPG proposes an amendment to 22 TAC §851.112 to substitute in subsection (a)(2) the term "Geoscientist-in-Training," for the current "Geologist in Training" because "Geologist in Training" is not the correct term.

TBPG proposes an amendment to 22 TAC §851.113 to add the word "Appointed" when referring to the Appointed Board and its duties, in subsection (d). Proposed changes in subsection (e), in two instances, would substitute the word "Board" with the defined term "TBPG," when it refers to an action that the agency may perform.

TBPG proposes an amendment to 22 TAC §851.156 to clarify the section. Subsection (b) would be revised to indicate that the Professional Geoscientist seal shall be of the design "shown in this subsection," followed by an image of the required design of a P.G.'s seal. The rule would no longer refer to the Texas Geoscience Practice Act (Act), §1002.251. In addition, proposed changes clarify that computer-applied seals may be of a reduced size provided that the Professional Geoscientist's full name and license number are clearly legible and that the Professional Geoscientist's name on the seal shall be the same name on the license certificate issued by the TBPG. In subsection (g)(2)(A), the word "FONT" in all caps is replaced with "font" in lower case letters to improve grammar.

TBPG proposes an amendment to 22 TAC §851.158(a)(1)(I) is revised to reflect the current agency practice that staff "may" dismiss complaints that are "meritless, non-jurisdictional (with or without advisement), or that do not involve a threat or potential threat to public health or safety," with the exception of complaints that involve violations of the continuing education requirement as opposed to complaints that are "administrative." Changes to subsection (a)(2) provide that a Complaint Review Team reviews complaints and investigations with the possible outcomes of, A) Recommending to the Appointed Board that a complaint be dismissed (with or without non-disciplinary advisory or warning), as opposed to actually dismissing a complaint under the current rule; (B) Referring the complaint back to staff for further investigation; or (C) Issuing a notice alleging violation(s) occurred, proposing the finding of such of violation(s) and proposing specific disciplinary action(s). Proposed changes also replace the word "Board" with "TBPG" when it refers to actions performed by agency staff, and add the word "Appointed" before the word "Board" where actions are taken by TBPG's Appointed Board.

TBPG proposes an amendment to 22 TAC §851.203 to replace the word "Board" with "TBPG" when it refers to actions performed by agency staff, and add the word "Appointed" before the word "Board" to show actions taken by TBPG's Appointed Board. The proposed amendment also adds the words "or remanding the case back to TBPG" in subsection (c), when so it now reads: "If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues an order dismissing the case or remanding the case back to TBPG and returning the file to the TBPG for informal disposition on a default basis in accordance with section 2001.056 of the Texas Government Code, the allegations in the notice of hearing will be deemed as true and proven, and the Appointed Board will issue a final order imposing a sanction requested in the notice of hearing."

TBPG proposes an amendment to 22 TAC §851.204 to replace the word "Board" with "TBPG" when it refers to actions performed by agency staff, and in other places add the word "Appointed" before the word "Board" to show actions taken by TBPG's Appointed Board.

FISCAL NOTE

STATE AND LOCAL GOVERNMENT

Charles Horton, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the sections are in effect there is no cost to the state and local governments as a result of enforcing or administering the sections as proposed. There is no anticipated negative impact on state or local government. There are no estimated reductions in cost to the state and to local governments as a result of enforcing or administering the proposed sections. There is no estimated loss or increase in revenue to the state or local governments as a result of enforcing or administering these sections. These proposals have no foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT AND COST

Mr. Horton has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections includes (1) the consistent use of terms defined in the rules, which adds to the clarity of the amended rules, (2) reorganization of various sections, making certain provisions easier for the reader to find, and (3) addition of emergency provisions that allow for quicker action in the event of a natural disaster. There will be no anticipated eco-

nomic cost to individuals who are required to comply with the proposed sections.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Horton has determined that the proposed rules will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

GOVERNMENT GROWTH IMPACT STATEMENT

Except as described below, during the first five years that the rules would be in effect:

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

(2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;

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

(5) the proposed rules do not create a new regulation;

(6) the proposed rules do not expand, limit, or repeal an existing regulation;

(7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and

(8) the proposed rules do not positively or adversely affect this state's economy.

The new regulations added by new 22 TAC §851.22 do not impose new burdens on the individuals required to comply but rather explain the current procedures and policies followed by the board and its staff in handling requests for waivers and substitutions of licensing requirements. The new regulation in 22 TAC §851.85 does not create a new regulation, but provides for the board to implement one or more temporary actions in an emergency or disaster situation.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Horton has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposed amendments and new rules may be submitted in writing to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to chorton@tbpg.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

22 TAC §851.10

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and Occupations Code §1002.154, which provides that the Board shall enforce the Act.

This section affects the Texas Geoscience Practice Act, Occupations Code §1002.151 and §1002.154.

§851.10. Definitions.

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

(1) Act--Texas Occupations Code, Chapter 1002, cited as the Texas Geoscience Practice Act.

(2) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) or other appropriate accrediting entity accepted by the Appointed Board.

(3) Address of record--In the case of an individual or firm licensed, certified, or registered by the Texas Board of Professional Geoscientists (TBPG), the address which is filed by the licensee with the TBPG.

(4) Advertising or Advertisement--Any non-commercial or commercial message, including, but not limited, to verbal statements, bids, web pages, signage, provider listings, and paid advertisement which promotes geoscience services [~~the services of a licensee~~].

(5) Applicant--An individual making application for a geoscience license or Geoscientist-in-Training (GIT) certification; a firm and/or the Authorized Official of a Firm making application for a Geoscience Firm registration.

(6) Application--The forms, information, attachments, and fees necessary to obtain a license as a Professional Geoscientist, the registration of a firm, or a certification as a Geoscientist-in-Training (GIT).

(7) Appointed Board--Those persons who are appointed by the Governor and confirmed by the Senate and qualify for office who may deliberate, vote, and be counted as a member in attendance of the Texas Board of Professional Geoscientists.

(8) ASBOG®--National Association of State Boards of Geology. ASBOG® serves as a connective link among the individual

state geologic registration licensing boards for the planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public. One of ASBOG®'s principal services is to develop standardized written examinations for determining qualifications of applicants seeking licensure as professional geologists. State boards of registration are provided with uniform examinations that are valid measures of competency related to the practice of the profession.

(9) Authorized Official of a Firm (AOF)--The individual designated by a Geoscience Firm to be responsible for the process of submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration with the TBPG; ensuring that the firm renews its registration status as long as the firm offers or provides professional geoscience services; ensuring that the geoscientist is a currently licensed P.G.; and communicating with the TBPG regarding any matter.

(10) Board staff--The Executive Director and all other staff employed by the Texas Board of Professional Geoscientists (administrative, investigative, and other support staff, etc.).

(11) Certificant--An individual holding a certificate as a Geoscientist-in-Training.

(12) Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

(13) Complainant--Any individual who has submitted a complaint to the TBPG, as provided in this chapter.

(14) Complaint--An allegation or allegations of wrongful activity related to the practice or offering of professional geoscience services in Texas. A complaint is within the TBPG's jurisdiction if the complaint alleges a violation of statutes or rules applicable to the public practice of geoscience or the requirements of licensure of a Professional Geoscientist (P.G.) or registration by an individual, firm, or other legal entity.

(15) Council of Soil Scientist Examiners (CSSE)--The purpose of the Council of Soil Science Examiners is to create, score and maintain examinations for State Soil Scientists licensing programs. CSSE develops professional criteria to confirm that individuals meet and exceed minimum qualifications to practice the profession.

(16) Default--The failure of the Respondent to respond in writing to a notice or appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, e-mail, fax or other electronic media in accordance with the notice of hearing or notice of informal conference. Default results in the actions being taken that were described in the notice of the hearing for a contested case or informal conference in the event of a failure to appear.

(17) Direct supervision--Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised individual(s).

(18) Discipline--One of three recognized courses of study under which an individual may qualify for a license as a Professional Geoscientist. Geoscience is comprised of the following disciplines: geology, geophysics, and soil science.

(19) Executive Director--The individual appointed by the Appointed Board who shall be responsible for managing the day to day affairs of the board, in accordance with the Act.

(20) Filed date--The date that the document has been received by the TBPG or, if the document has been mailed to the TBPG, the postmark date of the document.

(21) Geology--The discipline of geoscience that addresses the science of the origin, composition, structure, and history of the Earth and its constituent soils, rocks, minerals, fossil fuels, solids, fluids and gasses, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth, and is applied with judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of mankind. There are many subdivisions of geology, which include, but are not limited to, the following: historical geology, physical geology, economic geology, mineralogy, paleontology, structural geology, mining geology, petroleum geology, physiography, geomorphology, geochemistry, hydrogeology, petrography, petrology, volcanology, stratigraphy, engineering geology, and environmental geology.

(22) Geophysics--Refers to that science which involves the study of the physical Earth by means of measuring its natural and induced fields of force, and its responses to natural and induced energy or forces, the interpretation of these measurements, applied with judgment to benefit or protect the public.

(23) Geoscience--The science of the Earth and its origin and history, the investigation of the Earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth as applied with professional judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of the public.

(24) Geoscience Firm--Any entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas. This term includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization.

(25) Geoscience services (also professional geoscience services, and professional geoscience)--Services which must be performed by or under the direct supervision of a Professional Geoscientist and which meet the definition of the practice of geoscience as defined in the Texas Occupations Code, §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service. These services may include consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work, and the responsible supervision of those tasks.

(26) License--The legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter.

(27) License certificate--Any certificate issued by the TBPG showing that a license, registration, or certificate has been granted by the TBPG. A certificate is not valid unless it is accompanied by a card issued by the TBPG which shows the expiration date of the license, registration or certification.

(28) License status--The status of a Professional Geoscientist license, Geoscience Firm registration, or GIT certification is one of the following:

(A) Current license--A license, registration, or certification that has not expired.

(B) Expired license--A Professional Geoscientist license that has been expired for less than three years and is therefore renewable, or a Geoscience Firm registration or GIT certification that has been expired for less than one year and is therefore renewable.

(C) Permanently expired license--A license, registration, or certification that is no longer renewable.

(29) Licensee--An individual or other entity holding a current Professional Geoscientist license, GIT certificate, or firm registration.

(30) Meritless complaint--a complaint in which the allegations are unfounded or groundless (no legitimate basis for the allegation) or the allegations are unsubstantiated or unverified (no determination could be made as to whether there was any basis for the allegation).

(31) Non-jurisdictional complaint-- a complaint in which the TBPG has no jurisdiction over the alleged conduct.

(32) [~~(30)~~] Person--Any individual, firm, partnership, corporation, association, or other legal public or private entity, including a state agency or governmental subdivision.

(33) [~~(31)~~] Professional Geoscientist or P.G.--An individual who holds a license as a Professional Geoscientist issued by the TBPG.

(34) [~~(32)~~] Practice for the public--

(A) Providing professional geoscience services:

(i) For a governmental entity in Texas;

(ii) To comply with a rule established by the State of Texas or a political subdivision of the State of Texas; or

(iii) For the public or a firm or corporation in the State of Texas if the practitioner accepts ultimate liability for the work product; and

(B) Does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.

(35) [~~(33)~~] The Public--Any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with or be impacted by professional geoscience services.

(36) [~~(34)~~] Registered firm--A firm that is currently registered with the TBPG.

(37) [~~(35)~~] Registrant--An individual whose sole-proprietorship is currently registered with the TBPG or a firm that is currently registered with the TBPG.

(38) [~~(36)~~] Respondent--Any individual or firm, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Appointed Board.

(39) [~~(37)~~] Responsible charge--The independent control and direction of geoscience services or the supervision of geoscience services by the use of initiative, skill, and independent judgment.

(40) [~~(38)~~] Rule or Board Rule--State agency rules adopted by the Appointed Board and as published in the Texas Administrative Code, Title 22, Part 39, Chapters 850 and 851.

(41) [~~(39)~~] Soil Science--Soil science means the science of soils, their classification, origin and history, the investigation and interpretation of physical, chemical, morphological, and biological characteristics of the soil including, among other things, their ability to produce vegetation and the fate and movement of physical, chemical, and biological contaminants.

(42) [~~(40)~~] Sole-proprietorship--A single owned Professional Geoscientist's geoscience business that has no separate legal existence from its owner.

(43) [~~(41)~~] TBPG--The Texas Board of Professional Geoscientists, as used in this chapter, is a reference to the whole or any part of the entity that is the Texas Board of Professional Geoscientists.

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

Filed with the Office of the Secretary of State on June 14, 2018.

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Charles Horton
Executive Director
Texas Board of Professional Geoscientists
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For further information, please call: (512) 936-4405

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SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.20 - 851.25, 851.28 - 851.30, 851.32, 851.40, 851.41, 851.43, 851.80, 851.85

These sections are proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and Occupations Code §1002.154, which provides that Board shall enforce the Act.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.152, 1002.154, 1002.259, 1002.302, and 1002.351.

§851.20. Professional Geoscientist Licensing Requirements and Application Procedure.

(a) Requirements for licensure:

(1) Passing score on an examination or examinations required by the Texas Board of Professional Geoscientists (TBPG) covering the fundamentals and practice of the appropriate discipline of geoscience documented as specified in §851.21 of this chapter;

(2) A minimum of five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscience services documented and verified through professional references as specified in §851.23 of this chapter and Texas Occupations Code (TOC) §1002.256;

(A) A total of one year of qualifying work experience credit may be granted for each full-time year of graduate study in a discipline of geoscience, not to exceed two years;

(B) The Appointed Board may accept qualifying work experience in lieu of the education requirement as provided in TOC §1002.255;

(3) Good moral character as demonstrated by the submission of a minimum of five reference statements submitted on behalf of the applicant attesting to the good moral and ethical character of the applicant as specified in §851.24 of this chapter or as otherwise determined by the Appointed Board;

(4) Academic requirements for licensure as specified in TOC §1002.255 and §851.25 of this chapter; and

(5) Supporting documentation of any license requirement, as determined by Board staff or the Appointed Board, relating to criminal convictions as specified in §851.108 of this chapter; relating to substance abuse issues as specified in §851.109 of this chapter; and relating to issues surrounding reasons the Appointed Board may deny a license as specified in the Geoscience Practice Act at TOC §1002.401 and §1002.402.

(b) An applicant may request a waiver of any licensure requirement by submitting a Waiver Request (Form VI) and any additional information needed to substantiate the request for waiver with the application. If the Appointed Board determines that the applicant meets all the other requirements, the Appointed Board may waive any licensure requirement except for the payment of required fees.

(c) An application is active for one year including the date that it is filed with the Appointed Board.

(d) Professional Geoscientist application procedure. To be eligible for a Professional Geoscientist license under this chapter, an applicant must submit or ensure the transmission (as applicable) of the following to the TBPG:

(1) A completed, signed, notarized application for licensure as a Professional Geoscientist;

(2) Documentation of having passed an examination as specified in §851.21 of this chapter;

(3) Documentation of having met the experience requirements as specified in §851.23 of this chapter;

(4) A minimum of five (5) reference statements as specified in §851.24 of this chapter;

(5) Official transcript(s), as specified in §851.25 of this chapter;

(6) The application/first year licensing fee as specified in §851.80(b) of this chapter;

(7) Verification of every license, current or expired, in any regulated profession related to the public practice of geoscience in any jurisdiction (for example, Professional Engineer, licensed Water Well Driller, etc.); and

(8) Any written explanation and other documentation as required by instructions on the application or as communicated by Board staff, if applicable.

(e) Any transcripts, evaluations, experience records or other similar documents submitted to the TBPG in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the Executive Director authorizes its use.

(f) An application may be forwarded to the Appointed Board at the Executive Director's discretion.

(g) Obtaining or attempting to obtain a license by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(h) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the TBPG to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In most cases, a copy of a current visa or something equivalent will be sufficient. For applicants from countries that have a standing trade agreement with the US that specifically and adequately addresses professional licensure, such as NAFTA or AUSFTA, a copy of a visa is not required; however, the applicant must identify the trade agreement under which the applicant would be working in the US, and must establish the applicant has the required legal status to work in Texas.

(i) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application within approximately thirty (30) days after the receipt of the application and fee.

(j) An applicant should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(k) Upon receipt of all required materials and fees and satisfying all requirements in this section, the applicant shall be licensed and a unique Professional Geoscientist license number shall be assigned to the license. A new license shall be set to expire at the end of the calendar month occurring one year after the license is issued. Board staff shall send a new license certificate, [~~initial~~] license certificate expiration card, and a [~~an initial~~] wallet license expiration card as provided in subsection (p) of this section.

(l) A new [~~An original~~] license is valid for a period of one year from the date it is issued. Upon the first timely renewal of a license, the renewal period shall be from the date the license is renewed until the last day of the next birth month for the licensee. A license that is renewed late (one day after the expiration date of the license through the end of the 36th month past the expiration date of the license) is renewed in accordance to the rules set forth in §851.28 of this chapter.

(m) A license number is not transferable.

(n) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for any other license.

(o) Altering a license wall certificate, license certificate expiration card, or wallet license expiration card in any way is prohibited and is grounds for a sanction and/or penalty.

(p) The Professional Geoscientist license is the legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter. When a license is issued, a license wall certificate, the first license certificate expiration card, and the first wallet license expiration card are provided to the new licensee.

(1) The license wall certificate shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license was originally issued.

(2) The license wall certificate is not valid proof of licensure unless the license certificate expiration card is accompanying the

license certificate and the date on the license certificate card is not expired.

(3) The license certificate expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, and the date the license will expire, unless it is renewed.

(4) The wallet license expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license will expire, unless it is renewed.

(q) Once the requirements for licensure have been satisfied and the new license and license certificate have been issued, within sixty (60) days of notification the new licensee must then:

(1) Obtain a seal and submit TBPG Seal Submission (Form X) to the TBPG; and

(2) Register as a Geoscience Firm, if appropriate, as described in §851.30 of this chapter.

(r) An applicant who is a military service member, military veteran or a military spouse is directed to TBPG rule §851.26 of this chapter for additional licensing provisions.

§851.21. Licensing Requirements - Examinations.

(a) Qualifying examinations:

(1) An applicant for the Geology discipline must pass both parts of the National Association of State Boards of Geology (ASBOG®) examination. Applicants taking the ASBOG® examinations must also abide by the rules and regulations of ASBOG®.

(2) An applicant for the Soil Science discipline must pass both parts of the Council of Soil Science Examiners (CSSE) examination. Applicants taking the CSSE examinations must also abide by the rules and regulations of CSSE.

(3) An applicant for the Geophysics discipline must pass the Texas Geophysics Examination (TGE).

(b) An applicant may request an accommodation in accordance with the Americans with Disabilities Act. Proof of disability may be required.

(c) An applicant who does not timely arrive at and complete a scheduled examination will forfeit the examination fee.

(d) Cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

(e) An applicant who has passed an examination may not retake that type of examination.

(f) Exam Waiver. Applicants requesting a waiver from any examination(s) shall complete a Waiver Request (Form VI [~~V~~]) and shall comply with §851.22 regarding Waivers and Substitutions [~~any additional information needed to substantiate the eligibility for the waiver with the application~~].

(g) Examination requirements and examination procedure: A qualified individual who has not passed qualifying licensing examination(s) may access and abide by all relevant components of one of the following procedures to sit for a qualifying examination(s) in the appropriate discipline:

(1) Licensure in the discipline of geology (part I)/ASBOG® Fundamentals of Geology examination:

(A) Requirements: Completion of the education qualifications for licensure as specified in Texas Occupations Code §1002.255 and §851.25 of this chapter or currently enrolled in a course of study that meets the education requirements for licensure and within two regular semesters of completion of the qualifying course of study.

(B) Procedure:

(i) The applicant shall complete and submit an Exam Request (Form E) and any required documents to the TBPG, along with the appropriate fee by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will mail an ASBOG® Examination Candidate Request Form to the applicant.

(iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Candidate Request Form shall be provided to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(2) Licensure in the discipline of geology (part II)/ASBOG® Practice of Geology examination:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG.

(ii) Meet all other qualifications for licensure in subsection (a) of this section, and be within six months of meeting the qualifying experience requirement.

(B) Procedure:

(i) The applicant shall complete and submit both the [~~Initial~~] Application for P.G. Licensure (Form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and an Exam Request (Form E) along with the appropriate fee and any required documents to the TBPG, by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will mail an ASBOG® Examination Candidate Request Form to the applicant.

(iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Examination Candidate Request Form shall be provided to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(3) Licensure in the discipline of geophysics/TGE:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG and meet all qualifications for licensure in subsection (a) of this section, with the exception of the examination requirement; or

(ii) Under application for certification as a Geoscientist-in-Training with the TBPG and meet all qualifications for certification as a Geoscientist-in-Training in §851.41 of this chapter with the exception of having passed the TGE.

(B) Procedure:

(i) The applicant shall complete and submit an [~~both~~] Application for Professional Geoscientist (Form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and Examination Request Form (Form E) along with the appropriate fee and any required documents to the TBPG.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will provide TGE scheduling and examination payment information to the applicant.

(iii) The applicant shall submit the required information, along with the examination fee to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board staff shall notify the applicant of the results of the examination.

(4) Licensure in the discipline of soil science/Council of Soil Science Examiners (CSSE) Fundamentals of Soil Science and Practice of Soil Science Examinations: An applicant must meet the examination requirements of the CSSE; apply to take the required examinations directly with the CSSE and submit the required fees; follow all examination procedures of the CSSE; take and pass both parts of the examination; and follow CSSE procedures to ensure that the passing scores are forwarded to the TBPG.

[~~(h) An individual who plans to apply for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Fundamentals of Geology examination as long as the applicant:~~]

[~~(1) Submits two acceptable personal references;~~]

[~~(2) Has submitted any other necessary forms, documents, and fees; and~~]

[~~(3) Has acknowledged that the Appointed Board must approve an education waiver request or approve the substitution of experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request to substitute experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.~~]

[~~(i) An applicant for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Practice of Geology examination as long as the applicant:~~]

[~~(1) Meets or is within six months of meeting the qualifying experience requirement for licensure;~~]

[~~(2) Submits the required number/type of acceptable references required for licensure verifying the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);~~]

[~~(3) Has submitted a request for an education waiver or a substitution of experience for education;~~]

[~~(4) Has submitted any other necessary forms, documents, and fees; and~~]

[~~(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.~~]

[~~(j) An applicant for licensure as a Professional Geoscientist in the discipline of geophysics who does not fully meet the education requirement for licensure may take the Texas Geophysics Examination as long as the applicant:~~]

[~~(1) Meets or is within six months of meeting the qualifying experience requirement for licensure; TBPG Rules for Professional Geoscience Licensure Page 15 December 28, 2017~~]

[~~(2) Submits the required number/type of acceptable references required for licensure verifying the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);~~]

[~~(3) Has submitted a request for an education waiver or a substitution of experience for education;~~]

[~~(4) Has submitted any other necessary forms, documents, and fees; and~~]

[~~(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after the Texas Geophysics Examination has been passed.~~]

§851.22. Waivers and Substitutions: Policy, Procedures, and Criteria.

(a) Introduction: The Texas Board of Professional Geoscientists is charged with the responsibility of issuing a license to engage in the public practice of geoscience in the state of Texas only to those individuals who meet the qualifications for licensure, as provided by Texas law. The successful completion of the required examination for the specific discipline is an essential element in the Professional Geoscientist licensure process and, to date, the Board has found extremely limited circumstances that would cause the Board to consider waiving this requirement.

(1) The Texas Geoscience Practice Act (TGPA) (Occupations Code, Chapter 1002), §1002.259 provides that "Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license."

(2) An applicant for licensure as a Professional Geoscientist may request a waiver by submitting a copy of "REQUEST FOR WAIVER OF LICENSING REQUIREMENT-BOARD POLICY AND PROCEDURES", along with supporting documentation. Only an applicant for licensure may request a waiver. An applicant must have submitted a complete application, supporting documentation (such as transcripts and references), and applicable fees in order for a waiver request to be considered.

(3) Once a request for a waiver and all relevant documents and information supporting the request have been received, subject to scheduling logistics, the request will be placed on the next available

meeting of the TBPG's Application Review and Continuing Education Committee.

(b) Guidance Policy: The following policy was developed by the TBPG Board and is intended to be guidance for the Application Review and Continuing Education Committee and the Board in consideration of a request for waiver. In accordance with TOC §1002.259, an approval of a waiver request requires a vote of 2/3 of the TBPG Appointed Board (6 affirmative votes), regardless of the number of Board members in attendance. A request for the substitution of experience for education (provided by TOC 1002.255(b)) requires a simple majority vote of a quorum of the TBPG Appointed Board to be approved.

(c) TBPG's Application Review And Continuing Education Committee Review: TBPG's Application Review and Continuing Education Committee will review the request and supporting documentation and recommend to the full TBPG Board whether or not to grant the requested waiver. An applicant should provide a written justification, along with supporting documentation. An applicant may also appear before the Committee and the full Board to provide testimony to support the request. All requests the Committee recommends for approval will be scheduled for review by the full Board. Requests the Committee does not recommend for approval will not be submitted to the full board for review, unless the applicant requests review by the full Board.

(d) TBPG's Board Initial Review: TBPG Appointed Board will review requests the Committee recommends for approval and supporting documentation and will determine whether or not to approve the request (grant the requested waiver). An applicant whose request for a waiver or substitution was denied and who believes that there is additional information that was not available to the Board when it reviewed the request, may submit additional information to staff regarding the current application, along with a written request that the Board reconsider the request. If staff determines that new information has been submitted that may be relevant to the Board's review of an application/request, then staff will schedule the application/waiver request for reconsideration. In the review of a request to reconsider its decision on an application/waiver request, because new information has been submitted, the Board will first determine by a simple majority vote whether to reconsider the application/waiver request, based on whether relevant new information has been submitted. If the Board were to determine by vote that the new information warrants reconsideration of an application/waiver request, the Board would then reconsider the waiver request, including all of the new information available at that time. An applicant may appear before the Board and present information related to the request. The Board will reconsider its decision on a waiver request only once.

(e) Examination Waiver Requirements and Criteria.

(1) For TBPG's Appointed Board to waive an examination, an applicant must:

(A) Meet all other qualifications for licensure (qualifying work experience, references, education, documentation relating to criminal, disciplinary, and civil litigation history);

(B) Meet the criteria in the policy for the specific examination that is the subject of the waiver request; and

(C) Have not failed the examination that is the subject of the waiver request.

(2) Work experience an applicant submits pursuant to the following examination waiver policies must meet the criteria for qualifying work experience under TBPG rule §851.23 regarding qualifying experience record.

(3) ASBOG® Fundamentals of Geology Examination Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualifying work experience;

(B) M.S. and 13 years qualifying work experience; and

(C) Ph.D. and 10 years qualifying work experience.

(4) ASBOG® Practice of Geology Examination Waiver. An applicant must meet Minimum Criteria (a person may qualify for a waiver by meeting either "Generalized" Practice Experience or "Specialized" Practice Experience):

(A) Generalized practice experience (must meet all four criteria):

(i) Twenty (20) years of geosciences work experience;

(ii) Ten (10) years of supervisory experience (three or more individuals under supervision);

(iii) Coursework in six of the eight following ASBOG® task domains:

(-I-) Field geology;

(-II-) Mineralogy, petrology, and geochemistry;

(-III-) Sedimentology, stratigraphy, and paleontology;

(-IV-) Geomorphology, surficial processes, and quaternary geology;

(-V-) Structure, tectonics, and seismology;

(-VI-) Hydrogeology;

(-VII-) Engineering geology; and

(-VIII-) Economic geology and energy resources.

(iv) Demonstrate the ability to plan and conduct geosciences investigations considering human health and safety.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the ASBOG® task domains. One factor TBPG will consider is whether the examination is irrelevant or largely beyond the scope of the applicant's specialized experience and the applicant's intended field of practice.

(5) Council of Soil Science Examination (CSSE) - Fundamentals of Soil Science Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S and 15 years qualified work experience;

(B) M.S. and 13 years of qualified work experience; and

(C) Ph.D. and 10 years of qualified work experience.

(6) Council of Soil Science Examination (CSSE) - Professional Practice. No waiver is available.

(7) Texas Geophysics Examination (TGE). No Waiver is available.

(f) Substitution of Work Experience for Educational Requirements. Before the Appointed Board considers an application for substitution of work experience for an education requirement, the applicant seeking approval of the substitution must meet all of the following minimum criteria:

(1) The applicant must pass, within three (3) attempts, the appropriate qualifying licensing examination (or a substantially similar examination), depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice examinations administered by National Association of State Boards of Geology (ASBOG®);

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE);

(2) The applicant must have at least 15 years of qualifying work experience;

(3) The applicant must demonstrate the following:

(A) Ability to work with others;

(B) Ability to apply scientific methods;

(C) Ability to solve problems;

(D) Honest and ethical behavior;

(E) Ability to communicate effectively; and

(F) Relevant continuing education activities that advance knowledge throughout the applicant's professional career.

(4) The applicant is highly encouraged to appear before the Application Review and Continuing Education Committee for presentation of qualifications.

(g) Waiver of Education Requirement - Generally. Before the Appointed Board considers an application for education waiver, the applicant seeking a waiver of the education requirement must demonstrate mastery of a minimum required knowledge base in geoscience by meeting the following criteria:

(1) The applicant must demonstrate both of the following:

(A) A four-year degree in a field of basic or applied science that includes at least 15 hours of courses in geosciences from an accredited institution of higher education or the equivalent of a total of at least 15 hours of courses in geoscience from an accredited institution of higher education and/or other educational sources, as determined by the Appointed Board;

(B) An established record of continuing education and workshop participation in geoscience fields; and

(C) The Appointed Board may also determine that an individual applicant has satisfactorily completed other equivalent educational requirements after reviewing the applicant's educational credentials.

(2) The applicant must have at least eight years of qualifying geoscience work experience;

(3) The applicant must pass the appropriate qualifying examination, depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice examinations administered by National Association of State Boards of Geology (ASBOG®);

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE).

(h) Education Waiver for License in Geology Discipline - Fundamentals. An individual who plans to apply for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Fundamentals of Geology examination as long as the applicant:

(1) Submits two acceptable personal references;

(2) Has submitted any other necessary forms, documents, and fees; and

(3) Has acknowledged that the Appointed Board must approve an education waiver request or approve the substitution of experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request to substitute experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(i) Education Waiver for License in Geology Discipline - Practice. An applicant for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Practice of Geology examination as long as the applicant:

(1) Meets or is within six months of meeting the qualifying experience requirement for licensure;

(2) Submits the required number/type of acceptable references required for licensure verifying the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);

(3) Has submitted a request for an education waiver or a substitution of experience for education;

(4) Has submitted any other necessary forms, documents, and fees; and

(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(j) Education Waiver for License in Geophysics Discipline. An applicant for licensure as a Professional Geoscientist in the discipline of geophysics who does not fully meet the education requirement for licensure may take the Texas Geophysics Examination as long as the applicant:

(1) Meets or is within six months of meeting the qualifying experience requirement for licensure;

(2) Submits the required number/type of acceptable references required for licensure verifying the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);

(3) Has submitted a request for an education waiver or a substitution of experience for education;

(4) Has submitted any other necessary forms, documents, and fees; and

(5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after the Texas Geophysics Examination has been passed.

§851.23. Qualifying Experience Record.

(a) Applicants shall complete the Qualifying Experience Record on Application Form A and provide supplemental information to demonstrate the dates qualifying experience began and ended.

(b) The experience record shall be written by the applicant, shall clearly describe the geoscience work that the applicant personally performed in each setting, and shall delineate the role of the applicant in any group geoscience activity.

(c) The experience record should provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the geoscience work personally performed by the applicant.

(d) Professional geoscience references must be provided to verify enough of the experience record to cover at least the minimum amount of time needed by the applicant for issuance of a license. If an applicant cannot obtain a reference that verifies qualifying work experience needed to cover the minimum amount of time needed to demonstrate having met the experience requirement, the applicant shall work with TBPG staff to identify some alternate form of verification of the work experience.

(e) Parts of the experience record that are to be verified by references shall be written in sufficient detail to allow the Board staff to document the minimum amount of experience required and to allow the reference provider to recognize and verify the quality and quantity of the experience claimed.

(f) The experience record must demonstrate evidence of the applicant's competency to be placed in responsible charge of geoscience services of a similar character.

(g) Experience is qualifying if the applicant's duties and responsibilities included the performance of geoscience tasks or is acceptable to the TBPG. TBPG may accept research in or the teaching of a discipline of geoscience at the college or university level as qualifying work experience if the research or teaching, in the judgment of the TBPG, is comparable to work experience obtained in the practice of geoscience.

(h) Waiver of the Required Qualifying Work Experience. The Appointed Board has determined that the qualifying work experience required by statute for licensure is a necessary requirement that should not be waived. The Appointed Board does not offer waiver of this requirement for licensure.

§851.24. References.

(a) Applicants for a license shall provide at least five reference statements to the TBPG, of which not fewer than three are from Professional Geoscientists or other professionals acceptable to the Appointed Board who have knowledge of the applicant's moral and ethical character, reputation, general suitability for holding a license, and relevant work experience, unless more references are required to meet the requirements in this chapter.

(1) One or more of the reference statements shall verify geoscience experience claimed to meet the minimum years of experience required. Professional Geoscientists who have not worked with or directly supervised an applicant may review and judge the applicant's experience; such review shall be noted in the reference statement.

(2) References should include one or more individuals who have directly supervised or maintained responsible charge of the applicant.

(b) Professional Geoscientists who provide reference statements and who are licensed in a jurisdiction other than Texas shall include a copy of their wallet license expiration [~~pocket~~] card or other verification to indicate that their license is current and valid.

(c) The Appointed Board members and/or Board staff may, at their discretion, consider any, all or none of the responses from reference providers. Additional references may be required of the applicant when the Executive Director finds it necessary to adequately verify the applicant's experience or character. The Appointed Board and/or Board staff may at their discretion communicate with any reference provider or seek additional information.

(d) The applicant shall provide the reference statement form and a complete copy of the applicable portion(s) of the experience record to each reference provider.

(e) For a reference statement to be considered complete, the reference provider shall:

(1) Accurately complete the reference statement in detail;

(2) Review and evaluate all applicable portions of the supplementary experience record;

(3) Signify agreement or disagreement with the information written by the applicant and add any comments or concerns on the reference statement; and

(4) Place the completed reference statement and signed qualifying experience record in an envelope. After sealing the envelope, the reference provider's signature shall be placed across the sealed flap of the envelope and covered with transparent tape. The reference provider shall return the sealed envelope to the applicant.

(f) Applicants shall enclose all of the sealed reference envelopes with the [~~Initial~~] Application for P.G. Licensure (Form A) when submitted to the TBPG.

§851.25. Education Requirements and Equivalents.

(a) An applicant must have graduated from a course of study from an accredited university or program in one of the following disciplines of geoscience that consists of at least four years of study and includes at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit must be in upper-level college courses in that discipline:

(1) Geology or sub-discipline of geology including but not limited to engineering geology, petroleum geology, hydrogeology, and environmental geology;

(2) Geophysics; or

(3) Soil science.

(b) Educational Equivalent. An applicant who has not met the education requirement as set forth in subsection (a) of this section may satisfy the education requirement by having satisfactorily completed other equivalent educational requirements as determined by the Appointed Board.

(1) An applicant has satisfactorily completed other equivalent educational opportunities if the applicant has obtained a four year college or university degree or higher in any field and has completed at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit is in upper-level college courses in geoscience.

(2) The Appointed Board may also determine that an individual applicant has satisfactorily completed other equivalent educational requirements after reviewing the applicant's educational credentials.

(c) An official transcript (including either grades or mark sheets and proof that the degree was conferred) shall be provided for the degree(s) utilized to meet the educational requirements for licensure. Official or notarized copies of transcripts shall be submitted to the TBPG. Official transcripts shall be forwarded directly to the TBPG office by the respective registrars. The applicant is responsible for ordering and paying for all such transcripts. Additional academic information including but not limited to grades and transfer credit shall be submitted to the TBPG at the request of the Executive Director.

(d) If transcripts cannot be transmitted directly to the TBPG from the issuing institution, the Executive Director may recommend alternatives to the Appointed Board for its approval. Such alternatives may include validating transcripts in the applicant's possession through an Appointed Board-approved commercial evaluation service.

(e) Degrees and coursework earned at foreign universities shall be acceptable if the degree conferred and coursework have been determined by a member of the National Association of Credential Evaluation Services (NACES) to be equivalent to a degree conferred by or coursework completed in an accredited institution or program. It is the applicant's responsibility to have degrees and coursework so evaluated. The commercial evaluation of a degree shall be accepted in lieu of an official transcript only if the credential evaluation service has indicated that the credential evaluation was based on a verified official academic record or transcript.

(f) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.

(g) The Board staff shall accept no coursework which an applicant's transcript indicates was not completed with a passing grade or for credit.

(h) In evaluating two or more sets of transcripts from a single applicant, the Board staff shall consider a quarter hour of academic credit as two-thirds of a semester hour.

§851.28. Professional Geoscientist License Renewal and Reinstatement.

(a) The Board staff will mail a renewal notice to the last recorded address of each licensee, at least sixty (60) days prior to the date the license is about to expire. Regardless of whether the renewal notice is received, it is the sole responsibility of the licensee to pay the required renewal fee together with any applicable penalty at the time of payment. A licensee may renew a current license up to sixty (60) days in advance of its expiration. An expired license may be renewed within three years of the license expiration date.

(b) Upon the first renewal of a license, the licensure period will be prorated so that the new expiration date will be the last day of the licensee's birth month. The prorated renewal period will be for a minimum of four months and a maximum of fifteen months. Every subsequent expiration date shall be set for one year past the previous renewal date.

(c) A late penalty fee of $50 will be charged for a complete renewal application and fee received or postmarked sixty-one (61) days after the licensee's expiration date.

(d) The Appointed Board may refuse to renew a license if the licensee is the subject of a lawsuit regarding his/her practice of geoscience or is found censurable for a violation of TBPG laws or rules that would warrant such disciplinary action under §851.157 of this chapter.

(e) A license that has been expired for sixty (60) days or less may be renewed by submitting a P.G. Renewal Application (Form B) and the annual renewal fee to the TBPG. The renewal fee for a license that is renewed within sixty (60) days of expiration is the fee that was in place at the time the license expired. The licensee must also submit a signed Statement of Affirmation (Form VII) indicating whether the licensee practiced as a P.G. when their license was expired. Information regarding unlicensed non-exempt public geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff.

(f) A license that has been expired for more than sixty (60) days and less than ten months from the license expiration date may be renewed by submitting to the TBPG a P.G. Renewal Application (Form B), the annual renewal fee, and the late penalty fee. The renewal fee for a license that is renewed for more than sixty (60) days and less than ten months of expiration is the fee that was in place at the time the license expired. The licensee must also submit a signed Statement of Affirmation (Form VII) indicating whether the licensee practiced as a P.G. when their license was expired. Information regarding unlicensed non-exempt public geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff.

(g) A license that has expired for ten months or more but less than three years after the license expiration date may be renewed by submitting to the TBPG a P.G. Renewal Application (Form B), the annual renewal fee for each year missed plus the current year's renewal fee, and the late penalty fee. The licensee must also submit a signed Statement of Affirmation (Form VII), indicating whether the licensee practiced as a P.G. when the license was expired. If an applicant for renewal who has met the requirements for renewal has practiced as a P.G. with the license expired, the license shall be renewed. Information regarding unlicensed practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff.

(h) A license that is allowed to expire for a period of three years after the license expiration date is permanently expired and may not be renewed. The former licensee may re-apply for a new license as provided by the Act and applicable TBPG rules and will have to meet all licensure requirements in said Act and rules at the time of re-application.

(i) As per §1002.403 of the Act, the Appointed Board may suspend or revoke a license as disciplinary action against a licensee who is found censurable for a violation of the Act or rules.

(1) A license that has been suspended can be reinstated by the Board staff only if the suspended licensee complies with all conditions of the suspension, which may include payment of fines, continuing education requirements, participation in a peer review program or any other disciplinary action outlined in the Board Order that suspended the license.

(2) A license that has been revoked can be re-instated only if, by a majority vote, the Appointed Board approves reinstatement, given the applicant:

(A) Re-applies and submits all required application materials and fees;

(B) Successfully completes an examination in the required discipline of geoscience being sought for reinstatement if the applicant has not previously passed said examination; and

(C) Provides evidence to demonstrate competency and that future non-compliance with the statute and rules of the TBPG will not occur.

(j) Pursuant to Texas Occupations Code §55.002, a licensee is exempt from any increased fee or other penalty imposed in this section for failing to renew the license in a timely manner if the licensee provides adequate documentation, including copies of orders, to establish to the satisfaction of the Executive Director that the licensee failed to renew in a timely manner because the licensee was serving on active duty in the United States armed forces outside of Texas.

(k) The application fee is non-refundable.

§851.29. Endorsement and Reciprocal Licensure.

(a) Endorsement.

(1) Endorsement is the process whereby TBPG, based on review of evidence of having completed a requirement for licensure for an equivalent license in another jurisdiction, determines that the applicant has met a requirement for licensure as a Professional Geoscientist.

(2) An applicant for a Professional Geoscientist license who is currently or has been licensed or registered in the last ten years to practice a discipline of geoscience in Texas or another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country may be eligible to demonstrate having met all or some of the qualifications for licensure through endorsement.

(3) The Board staff will only consider documentation provided to the TBPG directly from a licensing authority that has issued a license to the applicant. It is the responsibility of the applicant to ensure that the licensing authority provides information to the TBPG and pays any associated costs.

(4) In order for the Board staff to consider evidence supporting the endorsement of a licensing qualification, the applicant must ensure that his or her licensing authority provides:

(A) Verification that the license is current or was held in the past ten years from the date of application; and

(B) Verification of the specific requirements that were met in order to become licensed.

(5) Verification may be in the form of:

(A) A document signed by an authorized agent of the jurisdiction indicating the specific qualifications that were met in order to become licensed; and/or

(B) Copies of specific documents that were submitted to the licensing authority to document having met a specific requirement.

(6) The TBPG may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(b) Reciprocal Licensure.

(1) Licensure by reciprocity agreement.

(A) Licensure by reciprocity agreement is the process whereby an applicant for licensure as a Professional Geoscientist in Texas who is currently licensed as a Professional Geoscientist (or equivalent license) in another United States jurisdiction (state, commonwealth or territory, including the District of Columbia) or another country becomes licensed in Texas and the process whereby an applicant currently licensed as a Professional Geoscientist in Texas applying for licensure as a Professional Geoscientist (or equivalent license) in the other jurisdiction becomes licensed in the other jurisdiction under the terms of a formal reciprocity agreement between the two jurisdictions.

(B) An applicant who holds a current license in a jurisdiction with which the TBPG has a reciprocity agreement may apply for licensure under the terms of the specific reciprocity agreement between the two jurisdictions.

(C) The TBPG shall maintain a list of each jurisdiction in which the requirements and qualifications for licensure or registration are comparable to those established in this state and with which a reciprocity agreement exists.

(2) Licensure by similar examination. An individual who is licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who has applied for licensure as a Professional Geoscientist under this subsection may meet the licensing examination requirement by submitting proof of passage of examination(s) that is/are substantially similar to the applicable examination(s) as specified in §851.21 of this chapter.

(3) Licensure by recognition of licensed experience in another jurisdiction. An applicant for a Professional Geoscientist license who is currently licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who was licensed without examination, i.e. "grandfathered", with regard to a licensing examination or who was licensed based on a licensing examination that is not recognized as substantially similar to the current licensing examination required for licensure under paragraph (2) of this subsection shall be deemed to have met the examination requirement upon verification of the following:

(A) Verification of a valid licensure in the other jurisdiction. The applicant requesting licensure under this subsection must be in good standing with the jurisdiction in which that individual holds their current license as a professional geologist or geoscientist;

(B) Verification of at least five (5) years of responsible professional geoscience work experience since the date of their initial licensure;

(C) Verification that licensure was maintained continuously (including sequential licensure, if a license was held in more than one jurisdiction) during the five (5) years prior to application with the TBPG;

(D) Verification of having met the education requirement for licensure; and

(E) [~~(D)~~] Verification that no complaint is pending against the applicant, that no complaint against the applicant has been substantiated, and no disciplinary action has ever been taken against the applicant.

(4) [~~(E)~~] The applicant seeking licensure under this subsection shall be responsible for contacting the jurisdiction(s) in which the applicant is currently licensed and all jurisdictions in which the applicant has ever been licensed and cause to have verification of information in subparagraphs (A) - (E) [~~(D)~~] of this paragraph submitted to TBPG.

§851.30. Firm Registration.

(a) Registration required. Unless an exemption applies, as outlined in Texas Occupations Code §1002.351(b), a firm or corporation may engage in the public practice of geoscience only if the firm is currently registered with the TBPG; and

(1) The geoscience services are performed by, or under the supervision of, a Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) The business of the firm includes the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a Professional Geoscientist and has overall supervision and control of the geoscience services performed in this state. As provided in §851.10(24) of this chapter, the term firm includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization. For the purposes of this section, the term public includes, but is not limited to, political subdivisions of the state, business entities, and individuals. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience.

(b) Unless registered by the TBPG or exempt from registration under Texas Occupations Code §1002.351 or elsewhere in this section, an individual or firm may not represent to the public that the individual or firm is a Professional Geoscientist or is able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Texas Occupations Code §1002.263(b).

(c) A currently licensed P.G. who offers services as an unincorporated sole proprietor is exempt from the firm registration requirements in this section. A P.G. who is exempt from the firm registration requirements under this section and who offers services under an assumed name must report the assumed name to the TBPG. A P.G. who is otherwise exempt from the firm registration requirements under this section may choose to register as a Geoscience Firm and pay the current Geoscience Firm registration fee.

(d) Registration requirements. In order to be eligible to register as a Geoscience Firm, the firm must:

(1) Affirm and demonstrate that the firm is an unincorporated sole-proprietorship or another business entity that offers or performs work that includes the public practice of geoscience;

(2) Identify an Authorized Official of a Firm who shall be responsible for submitting the application for the initial registration of the firm with the TBPG; ensuring that the firm maintains compliance with the requirements of registration; ensuring that the firm renews its registration status as long as the firm offers or provides professional geoscience services; ensuring that the geoscientist is a currently licensed P.G.; and communicating with the TBPG regarding any other necessary matter;

(3) Operate under a business model such that:

(A) The geoscience services are performed by, or under the supervision of, a licensed Professional Geoscientist who is in responsible charge of the work and who ensures that the firm complies with all laws, codes, rules, and standards applicable to the public practice of geoscience and who signs and seals all geoscientific reports, documents, and other records as required by this chapter and ensures that all geoscientific reports, documents, and other records are signed and sealed by a licensed Professional Geoscientist; or

(B) The principal business of the firm is the public practice of geoscience as determined by TBPG rule and a principal of the firm or an officer or director of the corporation is a licensed Professional Geoscientist and has overall supervision and control of the geoscience services performed in this state;

(4) Identify the business model and the Professional Geoscientist who fulfills the role of the licensed Professional Geoscientist in paragraph (3) of this subsection;

(5) Unless the firm is an unincorporated sole-proprietorship, a firm seeking registration with the TBPG must register the firm with the Office of the Secretary of State (SOS) and obtain a certificate of authority. If the firm operates under a name other than that which is filed with the SOS, an Assumed Name Certificate must be filed with the County Clerk. A firm's SOS certificate of authority number and all Assumed Name Certificate instrument numbers must be provided to the TBPG upon initial application. If the firm is a sole-proprietorship and the firm operates under a name that does not include the last name of the individual sole proprietor, the firm shall file an Assumed Name Certificate with the County Clerk;

(6) Submit a [~~an Initial~~] Firm Registration Application (Form C), in accordance to the procedures outlined in subsection (e) of this section;

(7) Upon initial application, affirm that the licensed Professional Geoscientist performing or supervising the geoscience services for a Geoscience Firm is an employee. A Geoscience Firm shall provide evidence of employment status upon request of the Board staff or an Appointed Board Member.

(e) Firm Registration Application Process.

(1) The Authorized Official of a Firm shall complete and submit, along with the required application fee, the form furnished by the TBPG which includes, but is not limited to, the following information listed in subparagraphs (A) - (E) of this paragraph:

(A) The name, address, and phone number of the firm offering to engage or engaging in the practice of professional geoscience for the public in Texas;

(B) The name, position, address, and phone numbers of each officer or director;

(C) The name, address and current active Texas Professional Geoscientist license number of each employee performing geoscience services for the public in Texas on behalf of the firm;

(D) The name, location, and phone numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional geoscience for the public in Texas, if any; and

(E) A signed statement attesting to the correctness and completeness of the application.

(2) Upon receipt of all required materials and fees and having satisfied requirements in this section, the firm shall be registered and a unique Geoscience Firm registration number shall be assigned to the firm registration. The new firm registration shall expire at the end of the calendar month occurring one year after the firm registration is issued.

(3) An application is active for one year including the date that it is filed with the TBPG. After one year an application expires.

(4) Obtaining or attempting to obtain a firm registration by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(5) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application.

(6) Applicants should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice

or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(f) The initial certificate of registration shall be valid for a period of one year from the date it is issued, plus any days remaining through the end of that month. A renewed firm registration is valid for a period of one year from the expiration date of the firm registration being renewed.

(g) A Geoscience Firm's completed and approved registration is the legal authority granted the holder to actively offer or practice professional geoscience upon meeting the requirements as set out in the Act and TBPG Rules. When a firm registration is issued, a firm registration wall certificate, the first firm registration certificate expiration card, and the first portable firm registration expiration card is provided to the new Geoscience Firm. The firm registration wall certificate shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the firm registration was originally issued. The firm registration wall certificate is not valid proof of current registration as a firm, unless it is accompanied by the firm registration certificate expiration card and the date on the firm registration certificate card is not expired. The firm registration certificate expiration card shall bear the name of the firm, the firm's unique firm registration license number, and the date the firm registration will expire, unless it is renewed. The portable firm registration expiration card shall bear the name of the firm, the firm's unique Geoscience Firm registration number, and the date the registration will expire, unless it is renewed.

(h) At least sixty (60) days in advance of the date of the expiration, the Board staff shall notify each registered firm of the date of the expiration and the amount of the fee that shall be required for its annual renewal. The registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Appointed Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(i) A certificate of registration which has been expired for less than one (1) year may be renewed by completing a Firm Registration Renewal Application (Form D), along with an affirmation signed by the Authorized Official of a Firm indicating whether professional geoscience services were offered, pending, or performed for the public in Texas when the firm's registration was expired, and payment of a $50 late renewal penalty. If a firm under application for late firm registration renewal has met the requirements for renewal and has indicated that the geoscience services were offered, pending, or performed for the public in Texas while the firm's registration was expired, [~~unless certain allegations of misconduct are present,~~] the firm's registration shall be renewed. Information regarding unregistered geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff. A firm registration that has been expired for more than one year is permanently expired and may not be renewed; a new application is required.

§851.32. Continuing Education Program.

(a) Each licensee shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the licensee's field of practice.

(c) Every P.G. licensee is required to obtain 15 continuing education hours (PDH units) during a standard renewal period year (one year). The continuing education requirement for a license that is renewed for a period less than one year per §851.28(b) of this chapter shall be prorated.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of Professional Geoscientists, or review [~~on-line~~] of the Texas Geoscientist Practice Act and TBPG rules.

(e) If a licensee exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) - (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization; or

(C) Serving in other official positions.

(8) Patents issued.

(9) Engaging in self-directed course work.

(10) Software programs published.

(g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section:

(1) 1 College or unit semester hour--15 PDH.

(2) 1 College or unit quarter hour--10 PDH.

(3) 1 Continuing Education Unit (CEU)--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH.

(6) Each published paper or article--10 PDH and book--45 PDH.

(7) Active participation, as defined in subsection (f)(7) of this section, in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH.

(8) Each patent issued--15 PDH.

(9) Each software program published--15 PDH.

(10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.

(i) Determination of Credit:

(1) The Appointed Board shall be the final authority with respect to whether a course or activity meets the requirements of this chapter.

(2) The Board staff shall not pre-approve or endorse any CEP activities. It is the responsibility of each licensee to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the continuing education requirement. However, a course provider may contact the Board staff for an opinion for whether or not a course or technical presentation would meet the CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the licensee.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the licensee.

(7) Credit for activity described in subsection (h)(7) of this section requires that a licensee serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The licensee is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The licensee must submit CEP certification on the log and a list of each activity, date, and hours claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.
[~~Figure:~~ ~~22 TAC 851.32(k)~~]

(l) CEP records for each licensee must be maintained for a period of three years by the licensee.

(m) CEP records for each licensee are subject to audit by the Board staff.

(1) Copies must be furnished, if requested, to the Board staff for audit verification purposes.

(2) If upon auditing a licensee, the Board staff finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience, the Board staff shall determine that the continuing education audit was not passed and refer the issue to the Enforcement Coordinator for appropriate action, which may include opening a complaint against the licensee for potential violations [~~may require the licensee to acquire additional PDH as needed to fulfill the minimum CEP requirements~~].

(n) A licensee may be exempt from the professional development educational requirements for a specific renewal period or periods for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New licensees that were licensed by passage of any part of the required licensing examinations shall be exempt for their first renewal period.

(2) A licensee serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A licensee employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) A licensee who is impacted by a long term physical disability or illness (of the licensee or a family member or other person) may be exempt.

(5) Supporting documentation must be furnished to the TBPG. The Executive Director shall review circumstances and documentation and make a decision. A licensee may appeal a decision of the Executive Director to an appropriate Committee or the full Appointed Board, as appropriate.

(o) A licensee may bring an expired license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 PDHs [~~units~~], including 2 PDHs [~~hours~~] of professional ethics, roles and responsibilities of Professional Geoscientists, then 30 PDHs [~~units~~] (including 2 PDHs [~~hours~~] of ethics) shall be the maximum number of PDHs required.

(p) Noncompliance:

(1) If a licensee does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A licensee must submit the CEP certification log and supporting records for credits claimed not later than 30 days after the Board sends by certified mail an audit notification and request for a log and supporting documentation to the licensee's last known address as shown by the Board's records. Failure to timely submit a CEP certification log and supporting records for credits claimed is grounds for disciplinary action.

(3) A licensee must satisfy CEP requirements. Failure to satisfy CEP requirements during the applicable period is grounds for disciplinary action.

(4) Falsely reporting that CEP requirements have been met for a renewal period is misconduct and will subject the licensee to disciplinary action.

§851.40. Geoscientist-in-Training (GIT).

(a) The GIT certification is intended for individuals who wish to express the intent to become a Professional Geoscientist while they are gaining qualifying geoscience work experience. Individuals who meet the educational requirements of §1002.255(a)(2)(A) of the Act and have successfully passed an examination as specified in §851.21 of this chapter are eligible to apply for GIT certification. This certification does not entitle an individual to practice as a licensed Professional Geoscientist.

(b) Upon accruing 5 years of post graduate geoscience work experience, individuals who are GIT certified and in good standing with the TBPG may apply for licensure as a Professional Geoscientist by submitting the following:

(1) TBPG [~~Initial~~] Application for P.G. Licensure (Form A);

(2) The application fee as detailed in §851.80 of this chapter;

(3) The required reference statements as detailed in §851.24 of this chapter;

(4) The required evidence of qualifying work experience as described in §851.23 of this chapter; and

(5) Proof of having passed one of the following discipline specific examinations:

(A) National Association of State Boards of Geology (ASBOG®) Practice of Geology;

(B) Council of Soil Science Examiners (CSSE) Soil Science Practice Examination; or

(C) Texas Geophysics Examination.

§851.41. Geoscientist-in-Training Certification Requirements and Application Procedure.

(a) To qualify for certification, an applicant must meet the following requirements:

(1) Educational requirements for licensure as a P.G. as established in §851.25(a) of this chapter.

(2) Passed one of the following examinations:

(A) Geology discipline: National Association of State Boards of Geology (ASBOG®) Fundamentals of Geology Examination;

(B) Soil Science discipline: Council of Soil Science Examiners (CSSE) Soil Science Fundamentals Examination; or

(C) Geophysics discipline: The Texas Geophysics Examination.

(3) One Reference Statement addressing the applicant's moral and ethical character.

(4) Application fee published in §851.80 of this chapter.

(b) Application Procedure:

(1) Submit a GIT Certification [~~Initial~~] Application (Form H);

(2) Submit an official academic transcript in accordance with §851.25(b) of this chapter;

(3) Submit one GIT Personal Reference Statement (Form III); and

(4) Pay the application fee.

(c) An applicant who has been granted an exemption from an examination described by (a)(2) of this section is not eligible to become a GIT.

§851.43. GIT Certification Period and Renewal.

(a) An initial GIT certification is valid for one year and may be renewed annually for a period of up to eight years. Renewals after the eighth year of certification will be granted at the discretion of the Appointed Board.

(b) A GIT certificate expires at the end of the month one year from the date of issuance, and can be renewed annually if the individual:

(1) Submits a GIT Certification Renewal Application (Form J) and pays the fee established by the Appointed Board;

(2) Accumulates eight or more Professional [~~Personal~~] Development Hours (PDH) as described in §851.32 of this chapter throughout the prior certification year to include one hour of ethics training; and

(3) Remains in good standing with the TBPG.

(c) Upon the first renewal of a GIT certification, the GIT is exempt from the continuing education requirement.

§851.80. Fees.

(a) All fees are non-refundable.

(b) P.G. [~~Initial~~] application and license fee--$255.

(c) Examination processing fee--$25.

(d) Applicable examination fees:

(1) Geology--Fundamentals and Practice as determined by the National Association of State Boards of Geology (ASBOG®).

(2) Geophysics--Texas Geophysics Examination--$175.

(3) Soil Science--Fundamentals and Practice as determined by the Council of Soil Science Examiners (CSSE).

(e) Issuance of a revised or duplicate license wall certificate--$25.

(f) P.G. renewal fee--$223 or as prorated under §851.28(b) of this chapter. The fee for annual renewal of licensure for any individual sixty-five (65) years of age or older, permanently disabled, or under a significant medical hardship, as determined by the Executive Director as of the renewal date shall be half the current renewal fee.

(g) Late renewal penalty--$50.

(h) Fee for affidavit of licensure--$15.

(i) Verification of licensure--$15.

(j) Temporary license--$200.

(k) Firm registration [~~initial~~] application--$300.

(l) Firm registration renewal--$300.

(m) Insufficient funds fee--$25.

(n) Application [~~Initial application~~] for Geoscientist-in-Training certification--$25.

(o) Annual renewal of Geoscientist-in-Training certification--$25.

(p) Texas Geophysics Examination Proctored Review--$50.

§851.85 Contingent Emergency/Disaster Response Actions.

(a) In the event of a declared emergency or disaster, the Executive Director may implement one or more temporary measures, as provided in this section, if the following conditions exist:

(1) The Governor of the State of Texas declares a disaster under Government Code, §418.014, or if the Executive Director determines that there is an emergency affecting the health, safety, or welfare of the public; and

(2) the Executive Director, in consultation with the TBPG Board Chairman, determines that enacting available temporary measures is necessary in the specified disaster or emergency area.

(b) Emergency Response Actions.

(1) Expiration dates for some or all license types may be extended. TBPG may extend the expiration date of a license as a Professional Geoscientist, a certification as a Geoscientist-in-Training, or a registration for a Geoscience Firm.

(2) Temporary suspension of certain fees. TBPG may waive the regular fees for duplicate license certificates, duplicate wall or wallet license expiration cards, or certain license verifications during the period of time that TBPG deems appropriate to address the emergency or disaster.

(3) Continuing education requirements for the renewal of a license or certification may be temporarily suspended or deadlines extended.

(4) The issuance of an emergency license as a Professional Geoscientist, valid for one year and is not renewable. To be eligible for an emergency license as a Professional Geoscientist under this section, an applicant must:

(A) submit a completed application on the appropriate TBPG form;

(B) provide proof of licensure in good standing as a Professional Geoscientist or Professional Geologist in another U.S. state jurisdiction;

(C) follow all of the laws and rules applicable to the non-exempt public practice of geoscience in Texas, including the registration of a Geoscience Firm; and

(D) pay the application and one-year license fee for the license for which the applicant has applied and any other applicable fee.

(c) The Executive Director, in consultation with the TBPG Board Chairman, may implement all or some contingent emergency response actions available under this section, depending on the circumstances and overall needs of the State of Texas and TBPG's licensees.

(d) The Executive Director may take other reasonable administrative actions warranted by the circumstances including, but not limited to, suspension of certain complaint investigations and complaint case adjudication actions, extension of deadlines in certain Board orders, suspension of certain continuing education audits, or expedition of certain Professional Geoscientist license or Geoscience Firm applications.

(e) The Executive Director shall ensure that notifications of emergency measures taken are communicated to all members of the Appointed Board, all affected license holders, and the general public, to the extent that it is feasible and as soon as it is feasible. The Executive Director may use various methods including, but not limited to, posting notices to the agency website and sending e-mails, letters, or postcards.

(f) Actions taken by the Executive Director under this section are effective only until the next regular or special meeting of the Appointed Board. The Appointed Board shall review all actions taken by the Executive Director under this section at the next regular or special meeting of the Appointed Board. The Appointed Board shall take action to either continue the actions taken by the Executive Director under this section for a specified amount of time, with or without modifications; or to discontinue the actions taken by the Executive Director under this section.

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Texas Board of Professional Geoscientists
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SUBCHAPTER C. CODE OF PROFESSIONAL CONDUCT

22 TAC §§851.101, 851.103, 851.104, 851.106, 851.109, 851.111 - 851.113

These sections are proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and Occupations Code §1002.154, which provides that the Board shall enforce the Act.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.152, 1002.154, 1002.259, 1002.263, 1002.302, and 1002.351.

§851.101. General.

(a) This subchapter is promulgated pursuant to the Act, Texas Occupations Code (TOC), §1002.153, which directs the Appointed Board to adopt a code of professional conduct that is binding on all license holders under the Act and provides that the Appointed Board may enforce the code by imposing sanctions, as provided by the Act or this chapter. Except as otherwise noted, this subchapter applies only to situations which are related to the practice of professional geoscience.

(b) Any person who holds a Professional Geoscientist license, [~~is the Authorized Official of a Firm (AOF),~~] is a Geoscience Firm, or

who holds a certificate as a Geoscientist-in-Training (GIT) is responsible for understanding and complying with the Act, rules adopted by the Appointed Board, and any other law or rule pertaining to the practice of professional geoscience. Any person under application for, currently holding, or eligible to renew a license, registration, or certification issued by the Texas Board of Professional Geoscientists (TBPG) is bound by the provisions of the Act and this chapter. The TBPG maintains jurisdiction over a license, registration, or certification it issues as long as the license, registration, or certification is current or renewable.

(c) A Professional Geoscientist, a Geoscience Firm [~~an AOF~~], or a person who holds a certificate as a Geoscientist-in-Training having knowledge of any alleged violation of the Act and/or TBPG rules shall cooperate with the TBPG in furnishing such information as may be required.

(d) A Professional Geoscientist, a Geoscience Firm [~~an AOF~~], or a person who holds a certificate as a Geoscientist-in-Training shall timely answer all inquiries concerning matters under the jurisdiction of the TBPG and shall fully comply with final decisions and orders of the Appointed Board. Failure to comply with these matters shall constitute a separate offense of misconduct subject to the penalties provided under the Act or this Chapter.

(e) The Appointed Board may take disciplinary actions as provided in §1002.403 of the Act for reasons stated in §1002.402 of the Act.

(f) This subchapter is not intended to suggest or define standards of care in civil actions against Professional Geoscientists, Geoscientists-in-Training, or Geoscience Firms involving their professional conduct.

(g) A Professional Geoscientist[~~, a Geoscientist-in-Training,~~] or a Geoscience Firm may donate professional geoscience services to charitable causes but must adhere to all provisions of the Act and the rules of the TBPG in the provision of all geoscience services rendered, regardless of whether the Professional Geoscientist[~~, a Geoscientist-in-Training,~~] or Geoscience Firm is paid for the geoscience services.

(h) A Professional Geoscientist or a Geoscientist-in-Training who is presenting geoscientific testimony, including geoscientific interpretation, analysis, or conclusions, or recommending geoscientific work before any public body or court of law, whether under sworn oath or not, must adhere to all provisions of the Act and the rules of the TBPG in the provision of all professional geoscience services rendered, regardless of whether the Professional Geoscientist is paid for the service or is providing such service on behalf of themselves or some other organization for which their services are provided at no cost.

§851.103. Recklessness.

(a) A Professional Geoscientist or Geoscience Firm shall not practice geoscience in any manner which, when measured by generally accepted geoscience standards or procedures, is reasonably likely to result or does result in the endangerment of the safety, health, or welfare of the public. Such practice is deemed to be "reckless."

(b) "Recklessness" shall include the following practices:

(1) Conduct that indicates that the Professional Geoscientist or Geoscience Firm is aware of yet consciously disregards a substantial risk of such a nature that its disregard constitutes a significant deviation from the standard of care that a reasonably prudent Professional Geoscientist or Geoscience Firm would exercise under the circumstances;

(2) Knowing failure to exercise ordinary care and attention toward the intended result when a procedure, technique, material, or system is employed as a result of a decision made by the Professional Geoscientist or Geoscience Firm and such failure jeopardizes or has the potential to jeopardize public health, safety, or welfare; or

(3) Action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to the design or construction of a particular project when such disregard jeopardizes or has the potential to jeopardize public health, safety, or welfare.

§851.104. Dishonest Practice.

(a) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice in such a manner as to:

(1) Defraud;

(2) Deceive; or

(3) Create a misleading impression.

(b) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not advertise publicly or individually to a client or prospective client in a manner that is false, deceptive, misleading, inaccurate, incomplete, out of context, or not verifiable.

(c) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific government [~~publicly~~] funded geoscience services.

(d) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not make any false, misleading, deceptive, fraudulent or exaggerated claims or statements about the services of an individual or organization, including, but not limited to, the effectiveness of geoscience services, qualifications, or products.

(e) If a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm learns that any false, misleading, deceptive, fraudulent or exaggerated claims or statement about the geoscience services, qualifications or products have been made, the licensee shall take reasonable steps to correct the inappropriate claims. As appropriate, the Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm may notify the TBPG in writing about these claims.

(f) Professional Geoscientists and Geoscience Firms shall issue statements in an objective and truthful manner. Professional Geoscientists, Geoscientist-in-Training, and Geoscience Firms must make reasonable efforts to make affected parties aware of the concerns regarding particular actions or projects, and of the potential economic, environmental, and public safety consequences of geoscientific decisions or judgments that are overruled or disregarded.

(g) A Geoscience Firm that [~~which~~] retains or hires others to advertise or promote the firm's practice remains responsible for the statements and representations made.

(h) A Geoscience Firm shall maintain a work environment that uses standard operating procedures and quality assurance/quality control standards related to the Geoscience Firm's practice to ensure that the Geoscience Firm protects the health, safety, property, and welfare of the public.

§851.106. Responsibility to the Regulation of the Geoscience Profession and Public Protection.

(a) Professional Geoscientists, Geoscientists-in-Training, and Geoscience Firms shall be entrusted to protect the public in the practice of their profession.

(b) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not:

(1) Knowingly participate, directly or indirectly, in any plan, scheme, or arrangement having as its purpose the violation of any provision of the Act or the rules of the TBPG;

(2) Aid or abet, directly or indirectly:

(A) Any unlicensed person in connection with the unauthorized practice of professional geoscience;

(B) Any business entity in the practice of professional geoscience unless carried on in accordance with the Act and this chapter; or

(C) Any person or any business entity in the use of a professional seal or other professional identification so as to create the opportunity for the unauthorized practice of geoscience by any person or any business entity;

(3) Fail to exercise reasonable care or diligence to prevent his/her partners, associates, shareholders, and employees from engaging in conduct which, if done by a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm, would violate any provision of the Act or the rules of the TBPG.

(c) A Professional Geoscientist or a Geoscientist-in-Training possessing knowledge of an Applicant's qualifications for licensure shall cooperate with the TBPG by timely responding in writing to the TBPG regarding those qualifications when requested to do so by the TBPG.

(d) A Professional Geoscientist shall be responsible and accountable for the care, custody, control, and use of his/her Professional Geoscientist seal, professional signature, and other professional identification. A Professional Geoscientist whose seal has been lost, stolen, or otherwise misused shall report the loss, theft, or misuse to the TBPG immediately upon discovery of the loss, theft, or misuse. The Executive Director may invalidate the license number of the lost, stolen, or misused seal upon the request of the Professional Geoscientist if the Executive Director deems it necessary.

(e) A Professional Geoscientist, a Geoscientist-in-Training, or an Authorized Official of a Firm shall remain mindful of his/her obligation to the profession and to protect public health, safety, and welfare and shall report to the TBPG known or suspected violations of the Act or the rules of the TBPG.

(f) A Professional Geoscientist or Geoscience Firm shall keep adequate records of geoscience services provided to the public for no less than five (5) years following the completion and final delivery of the service. Adequate records shall include, but not be limited to:

(1) Documents that have been signed and sealed or would require a signature and a seal;

(2) Relevant documentation that supports geoscientific interpretations, conclusions, and recommendations;

(3) Descriptions of offered geoscience services;

(4) Billing, payment, and financial communications; and

(5) Other relevant records.

(g) Professional Geoscientists, a Geoscientists-in-Training, and Geoscience Firms must adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, in order to make informed recommendations and decisions.

§851.109. Substance Abuse.

(a) If in the course of a disciplinary proceeding, it is found by the Appointed Board that a Professional Geoscientist's abuse of alcohol or a controlled substance, as defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code, contributed to a violation of the Act or the rules of the TBPG, the Appointed Board may condition its disposition of the disciplinary matter on the Professional Geoscientist's completion of a rehabilitation program approved by the Department of State Health Services.

(b) A Professional Geoscientist's abuse of alcohol or a controlled substance that results in the impairment of the Professional Geoscientist's professional skill so as to cause or potentially cause [~~to have caused~~] a [~~direct~~] threat to the property, safety, health, or welfare of the public may be deemed "Gross Incompetency" and may be grounds for revocation or suspension of a Professional Geoscientist's license or other appropriate disciplinary actions provided by the Act.

(c) In order to determine whether abuse of alcohol or a controlled substance contributed to a violation or whether the continued professional practice of a licensee is a threat to the public safety the Appointed Board may order an examination by one or more licensed health care providers authorized to provide diagnosis or treatment of substance abuse.

§851.111. Professional Geoscientists Shall Maintain Confidentiality of Clients.

(a) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law, rule or court order; or when those confidences, if left undisclosed, would constitute a threat or potential threat to the health, safety or welfare of the public.

(b) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of another person.

(c) A Professional Geoscientist or Geoscience Firm shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the Professional Geoscientist's or Geoscience Firm's employees and associates.

§851.112. Required Reports to the TBPG.

(a) A Professional Geoscientist, Geoscientist-in-Training, or a Geoscience Firm shall make written reports to the TBPG office within thirty (30) days of the following, as applicable:

(1) Any changes in a firm's name, the Authorized Official of the Firm (AOF), the firm's owners, officers, or directors, Professional Geoscientist(s) employed by the firm, Professional Geoscientist(s) who serve as the P.G. in Responsible Charge for the firm or any branch offices, communication phone number(s) of the Authorized Official of the Firm or P.G.s, and any other changes as identified in §851.152 of this chapter;

(2) Any changes in an individual P.G.'s or Geoscientist-in-Training's [~~Geologist in Training~~'s] (GIT's) mailing address or other contact information and any changes in employment status with a firm (e.g. leaving or starting employment with a current firm, any new additional place(s) of employment, etc.);

(3) The initiation of practice as any other type of firm, corporation, partnership (whether or not the partnership is an incorporated entity), or other business entity that requires registration by the TBPG to engage in the public practice of geoscience;

(4) The notification in paragraphs (1) - (3) of this subsection shall include full legal trade or business name of the association or employment, physical location and mailing address of the business, status of business (corporation, assumed name, partnership, or self-employment through use of own name), legal relationship and position of responsibility within the business, telephone number of the business office, effective date of this change, and reason for this notification (changed employment or retired, firm went out of business or changed its name or location, etc.) and information regarding areas of practice within each employment or independent sole practitioner practice setting;

(5) A change of business phone number, an additional business phone number, or a change in the home phone number;

(6) A criminal conviction, other than a Class C misdemeanor traffic offense, of the licensee or Geoscientist-in-Training;

(7) The settlement of or judgment rendered in a civil lawsuit filed against the licensee or Geoscience Firm relating to the Professional Geoscientist's or Geoscience Firm's professional geoscience services; or

(8) Final disciplinary or enforcement actions against the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm taken by a licensing or certification body related to the practice of professional geoscience when known by the licensee.

(b) The information received under subsection (a) of this section may be used by the TBPG to determine whether a possible violation may have occurred.

(c) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the Appointed Board.

(d) A Geoscience Firm shall notify the TBPG in writing no later than thirty (30) days after a change in the business entity's:

(1) Physical or mailing address, electronic mail address, telephone or facsimile number, or other contact information;

(2) Officers or directors if they are the only Professional Geoscientists of the firm;

(3) Employment status of the Professional Geoscientists of the firm;

(4) Operation including dissolution of the firm or that the firm no longer offers to provide or is not providing professional geoscience services to the public in Texas; or

(5) Operation including addition or dissolution of branch and/or subsidiary offices.

(e) Notice as provided in subsection (d) of this section shall include, as applicable, the:

(1) Full legal trade or business name entity;

(2) The firm registration number;

(3) Telephone number of the business office;

(4) Name and license number of the license holder employed by or leaving the entity;

(5) Description of the change; and

(6) Effective date of this change.

(f) A Geoscience Firm that obtains a new certificate of authority from the Office of the Secretary of State or files a new Assumed Name Certificate with the County Clerk or the Office of the Secretary of State must provide the new instrument number to the TBPG within thirty (30) days of the action.

§851.113. Duty to abide by Board Order and timely pay administrative penalty.

(a) All persons who are the subject of a Board order shall abide by the terms of that order. Failure to abide by the terms of a Board order is grounds for disciplinary action.

(b) All persons who are assessed an administrative penalty must pay the administrative penalty not later than the 30th day after the date the Board's order becomes final or timely satisfy section 1002.454(b) of the Texas Occupations Code.

(c) Failure to timely pay an administrative penalty is grounds for disciplinary action. This subsection does not apply if a person timely complies with section 1002.454(b) of the Texas Occupations Code regarding staying the enforcement of the administrative penalty at issue.

(d) The Appointed Board may deny a person's request for a license, registration or certification, or the renewal of a license, registration, or certification if the person has failed to timely pay an administrative penalty.

(e) When a person pays money to the TBPG [~~Board~~], the TBPG [~~Board~~] may first apply that money to outstanding administrative penalties owed by that person before applying it to any other fee or cost.

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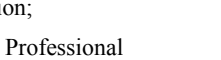

SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

22 TAC §851.156, §851.158

These sections are proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and Occupations Code §1002.154, which provides that the Board shall enforce the Act.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.152, 1002.154, 1002.259, 1002.263, 1002.302, and 1002.351.

§851.156. Professional Geoscientist Seals and Geoscience Firm Identification.

(a) The purpose of the Professional Geoscientist's seal is to show that professional geoscience services were performed by a qualified licensed Professional Geoscientist and to identify the Professional Geoscientist who performed the geoscience services.

(b) The Professional Geoscientist seal shall be of the design shown in this subsection. [~~The Professional Geoscientist shall utilize titles set forth in the Texas Geoscience Practice Act (Act), §1002.251.~~]

Physical seals of two different sizes will be acceptable: a pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a two-inch seal) [~~to be of the design shown in this subsection~~]. Computer-applied seals may be of a reduced size provided that the Professional Geoscientist's full name and license number are clearly legible. The Professional Geoscientist's name on the seal shall be the same name on the license certificate issued by the TBPG.

Figure: 22 TAC §851.156(b) (No change.)

(c) A Professional Geoscientist shall only seal documents that contain geoscience services performed by or under his/her direct supervision. Upon sealing, the Professional Geoscientist takes full professional responsibility for geoscience services that are provided through the sealed document.

(d) It shall be misconduct to knowingly sign or seal any geoscience document if its use or implementation may endanger the health, safety, or welfare of the public.

(e) It shall be unlawful for a license holder whose license has been revoked, suspended, or has expired to sign or affix a seal on any document.

(f) All seals utilized by a license holder shall be capable of leaving a permanent ink or impression on the document.

(g) Electronically conveyed geoscience documents requiring a seal must contain an electronic seal and electronic signature. Such seals should conform to the design requirements set forth in this section.

(1) A Professional Geoscientist must employ reasonable security measures to make the document unalterable. The Professional Geoscientist shall maintain the security of his/her electronic seal and electronic signature. The following methods are allowed:

(A) The Professional Geoscientist may electronically copy the original hard copy of the document that bears his/her seal, original signature, and date and transmit this document in a secure electronic format.

(B) The Professional Geoscientist may create an electronic seal and electronic signature for use in transmitting geoscientific documents by making a secure electronic graphic of his/her original seal and signature.

(2) The use of an electronically-generated signature is not allowed by changing the word processing font from a "normal text" to a signature/handwriting font.

(A) Shown below is a sample of an unauthorized electronically-generated signature using the Lucida Handwriting font [~~FONT~~].

Figure: 22 TAC §851.156(g)(2)(A) (No change.)

(B) Shown below is a sample of a digital image of a geoscientist's seal and original signature saved as a digital image (JPEG Format, for example).

Figures: 22 TAC §851.156(g)(2)(B) (No change.)

(h) Preprinting of blank forms with a Professional Geoscientist's seal is prohibited.

(i) Signature reproductions, including but not limited to, rubber stamps, decals or other replicas, and electronically-generated signatures shall not be used in lieu of the Professional Geoscientist's actual signature or a true digital graphic copy of the actual signature.

(j) A Professional Geoscientist shall take reasonable steps to insure the security of his/her physical or electronically-generated seals at all times. In the event of loss of a seal, the Professional Geoscientist will immediately give written notification of the facts concerning the loss to the Executive Director.

(k) Professional Geoscientists shall affix an unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any geoscience document as outlined in subsection (l) of this section before such document is released from their control. Preliminary documents released from their control shall identify the purpose of the document, the Professional Geoscientist(s) of record and the Professional Geoscientist license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.G. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(l) The Professional Geoscientist shall sign, seal, and date the original title sheet or a signature page of geoscience documents, specifications, details, calculations, or estimates, and each sheet of maps, drawings, cross sections, or other figures representing geoscientific services carried out under the supervision of the geoscientist, regardless of size or binding. All unbound geoscience documents, including but not limited to, research reports, opinions, recommendations, evaluations, addenda, and geoscience software shall bear the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act, unless the geoscience service is exempt under §1002.252 of the Texas Occupations Code. Electronic correspondence of this type shall include an electronic signature as described in subsection (f) of this section or be followed by a hard copy containing the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act.

(m) Geoscience services performed by more than one Professional Geoscientist shall be sealed in a manner such that all geoscience can be clearly attributed to the responsible Professional Geoscientist or Professional Geoscientists. When sealing plans or documents on which two or more Professional Geoscientists have worked, the seal of each Professional Geoscientist shall be placed on the plan or document with a notation describing the geoscience services done under each Professional Geoscientist's responsible charge.

(n) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original geoscience documents; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of documents containing geoscience services submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(o) When a Professional Geoscientist elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

(1) Individually sealed by the Professional Geoscientist; or

(2) Specified on an integral design/title/contents sheet that bears the Professional Geoscientist's seal, signature, and date with a statement authorizing its use.

(p) Alteration of a sealed document without proper notification to the responsible Professional Geoscientist is misconduct or an offense under the Act.

(q) A license holder is not required to use a seal for a document for which the license holder is not required to hold a license under Texas Occupations Code, Chapter 1002.

(r) All geoscience documents released, issued, or submitted by a licensee shall clearly indicate the Geoscience Firm name and registration number by which the Professional Geoscientist is employed. If the Professional Geoscientist is employed by a local, State, or Federal Government agency or a firm that is exempt from the requirement of registration under Texas Occupations Code, Chapter 1002, Subchapter H, then only the name of the agency or firm shall be required.

(s) TBPG also considers a document to meet the sealing requirement if a reader or user of the document can determine that the original document is complete and unaltered from that which was placed under seal.

§851.158. Procedures.

Procedures generally. Except for a suspension under TOC §1002.403(3), the procedures for investigation and dispensation of complaints are as follows:

(1) Staff action.

(A) Verify that the complaint meets legal requirements;

(B) Verify the identity of the complainant (if complaint is not notarized);

(C) Open complaint and set up complaint record;

(D) Review complaint for TBPG jurisdiction;

(E) Review for imminent danger to the public health, safety, or welfare;

(F) Prioritize complaint as required by TOC §1002.154;

(G) Provide acknowledgement and notification to complainant;

(H) Investigate complaint and complete confidential investigation report;

(I) May dismiss [~~Dismiss~~], with or without advisement, complaints that are [~~administrative,~~] meritless, [~~or~~] non-jurisdictional, or that do not involve a threat or potential threat to public health or safety, with the exception of complaints that involve violations of the continuing education requirement.

(2) Complaint review team. Review complaint and investigation with the possible outcomes of:

(A) Recommend to the Appointed Board that the complaint be dismissed [~~Dismissal of complaint~~] (with or without non-disciplinary advisory or warning); [~~or~~]

(B) Refer the complaint back to staff for further investigation; or

(C) [~~(B)~~] Issue notice of alleged violation-proposed finding of violation and proposed disciplinary action.

(3) Notice of alleged violation.

(A) The notice of alleged violation will state the authority of the TBPG to enforce the Act and take disciplinary action, the facts or conduct alleged to warrant disciplinary action, identify the proposed disciplinary action, provide the opportunity for an informal conference to show compliance with all requirements of law, and provide the opportunity for a contested-case hearing.

(B) The notice of alleged violation will provide three options:

(i) Accept the proposed findings and proposed disciplinary action, and waive the right to an informal conference, contested-case hearing, and judicial review, by signing and returning the enclosed proposed Board order;

(ii) Request an informal conference and a contested-case hearing; and

(iii) Request a contested-case hearing.

(C) Waiver and default.

(i) To proceed to issue a default order, the notice of alleged violation must state the following in capital letters in at least 12-point bold-face type: FAILURE TO TIMELY RESPOND TO THIS NOTICE BY TIMELY REQUESTING EITHER AN INFORMAL CONFERENCE AND A CONTESTED-CASE HEARING OR A CONTESTED-CASE HEARING WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION BEING GRANTED BY DEFAULT. YOU MUST RESPOND AND REQUEST A HEARING IN WRITING WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE OR YOU WAIVE YOUR RIGHT TO A HEARING.

(ii) Additionally, to proceed to issue a default order, the notice of alleged violation must also state the following: If you fail to request a hearing in writing within 30 days of receipt of this notice you will be deemed to have admitted the factual allegations in this notice, waived the opportunity to show compliance with the law, waived the right to a hearing, and waived objection to the recommended sanction.

(iii) If a person fails to file a written request for a contested-case hearing within 30 days of receipt of the notice of alleged violation, the person will be deemed to have admitted the factual allegations in the notice of alleged violation, waived the opportunity to show compliance with the law, waived the right to a hearing, and waived objection to the recommended sanction.

(iv) If a person responds and waives the right to an informal conference and a contested-case hearing or fails to file a written request for either an informal conference and a contested-case hearing or a contested-case hearing within 30 days of receipt of the notice of alleged violation, the Board shall proceed to resolve the matter on an informal basis by issuing a default order.

(D) The TBPG [~~Board~~] may serve the notice of alleged violation by sending it to the person's last known address as shown by the TBPG's [~~Board's~~] records.

(E) The notice of alleged violation shall be sent by first class or certified mail to the person's last known address as shown by the TBPG's [~~Board's~~] records, and in addition should also be sent to the person's email address as shown by the TBPG's [~~Board's~~] records.

(4) Informal conference.

(A) The informal conference will be informal and will not follow procedures for contested cases.

(B) The informal conference panel may be composed of Board staff and Appointed Board members. The panel may limit attendance and the time allotted for the informal conference.

(C) The informal conference is an opportunity for a person to show compliance with law. The person may speak and provide documents for the panel's consideration.

(D) The informal conference panel may recommend proposed action to be taken by the Appointed Board. The proposed action may be different from that stated in the notice of alleged violation.

(5) Contested-case hearing. If a person timely and properly requests a contested-case hearing, one shall be set at the State Office of Administrative Hearings.

(6) Board order. Except for dismissals, the Appointed Board should resolve complaints by order. The Board may accept or reject any proposed order. If a proposed order is rejected, the Appointed Board may among other things dismiss the complaint, direct Board staff to modify an order and propose the modified order for later consideration, or direct that the matter be set for a contested-case hearing.

(7) All disciplinary actions shall be permanently recorded. Except for private reprimands, all disciplinary actions shall be placed on the TBPG's website and made available upon request as public information.

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802646
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 936-4405

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SUBCHAPTER E. HEARINGS--CONTESTED CASES AND JUDICIAL REVIEW

22 TAC §851.203, §851.204

These sections are proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; and Occupations Code §1002.154, which provides that the Board shall enforce the Act.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.152, 1002.154, 1002.259, 1002.263, 1002.302, and 1002.351.

§851.203. Defaults.

(a) The Appointed Board may serve the notice of hearing on the respondent by sending it to his or her last known address as shown by the TBPG's [~~Board's~~] records.

(b) Default. If the party who does not have the burden of proof fails to appear at a contested-case hearing at the State Office of Administrative Hearings, the administrative law judge may issue a default proposal for decision that can be adopted by the Appointed Board.

(c) Failure to issue default proposal for decision. If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues an order dismissing the case or remanding the case back to TBPG and returning the file to the TBPG [~~Board~~] for informal disposition on a default basis in accordance with section 2001.056 of the Texas Government Code, the allegations in the notice of hearing will be deemed as true and proven, and the Appointed Board will issue a final order imposing a sanction requested in the notice of hearing.

(d) Failure to prosecute. If an applicant for licensure fails to appear at a contested case hearing at the State Office of Administrative Hearings, the administrative law judge must dismiss the case for want of prosecution, any relevant application will be withdrawn, and the TBPG [~~Board~~] may not consider a subsequent application from the party until the first anniversary of the date of dismissal of the case at the State Office of Administrative Hearings. If the administrative law judge dismisses the case and returns the file to the Appointed Board for informal disposition on a default basis in accordance with §2001.056 of the Texas Government Code, the Appointed Board will issue a final order referring to this rule and advising the applicant that the application was withdrawn and the applicant may reapply for licensure one year after the date the Appointed Board signs the final order.

(e) Applicants for licensure bear the burden to prove fitness for licensure.

(f) Contesting a final order issued following a default or dismissal for failure to prosecute. In the event that the respondent or applicant wishes to contest a final order issued following a default or dismissal for failure to prosecute, the respondent or applicant must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:

(1) the default was neither intentional nor the result of conscious indifference;

(2) the respondent or applicant has a meritorious case or defense;

(3) a new hearing will not harm the TBPG [~~Board~~]; and

(4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case in the movant's favor.

§851.204. Costs of Administrative Hearings.

(a) If a person files a suit for judicial review of an agency decision in a contested case, the TBPG [~~Board~~] shall request that the contested-case hearing be transcribed.

(b) Costs. The costs of transcribing the contested-case hearing and preparing the record for appeal in a suit for judicial review shall be paid by the party who appeals to district court.

(c) Documentation of costs. Documentation supporting the costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal shall be included in the administrative record or filed with the court.

(d) Recovery as court costs. The costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal in a suit for judicial review may be recovered as court costs.

(e) Additionally and alternatively, failure to timely pay the cost of transcribing the contested-case hearing is grounds for disciplinary action, and payment of the cost of transcribing the contested-case hearing is due no later than 60 days after the TBPG [~~Board~~] sends a request for payment and copy of the documentation of costs to the respondent's last known address as shown by the TBPG's [~~Board's~~] records or to the respondent's attorney if any.

(f) The TBPG [~~Board~~] may deny a person's request to issue or renew a license, registration, or certification if the person has failed to pay the cost of transcribing the contested-case hearing.

(g) When a person pays money to the TBPG [~~Board~~], the TBPG [~~Board~~] may first apply that money to outstanding transcript costs owed by that person before applying it to any other fee or cost.

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Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 936-4405

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 556. NURSE AIDES

26 TAC §§556.1 - 556.13

The Texas Health and Human Services Commission (HHSC) proposes new Chapter 556, Nurse Aides, comprised of §§556.1 - 556.13 in Title 26, Part 1.

BACKGROUND AND PURPOSE

The Texas Secretary of State created Title 26, Part 1, of the Texas Administrative Code to consolidate rules that govern functions of HHSC. These rules are currently in Titles 1, 25, and 40. As part of the consolidation into Title 26, HHSC proposes new rules in Chapter 556 to replace rules in Title 40, Chapter 94, Nurse Aides. The rules in Chapter 94 are proposed for repeal elsewhere in this issue of the *Texas Register.* The proposed new rules are substantially the same as the rules that are proposed for repeal.

The proposed new rules change references to the Department of Aging and Disability Services (DADS) that were in Chapter 94 to HHSC to reflect that DADS was abolished effective September 1, 2017, and its functions have transferred to HHSC. In addition, the proposed new rules change references to rules in Chapter 94 being proposed for repeal to the corresponding rules in proposed new Chapter 556.

SECTION-BY-SECTION SUMMARY

Proposed new §556.1, Basis, replaces 40 TAC §94.1.

Proposed new §556.2, Definitions, replaces 40 TAC §94.2. Paragraphs (9) - (14) were renumbered to reflect the deletion of the definition of "DADS" and addition of the definition of "HHSC."

Proposed new §556.3, Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements, replaces 40 TAC §94.3.

Proposed new §556.4, Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP), replaces 40 TAC §94.4. In subsection (e), the reference to 40 TAC Chapter 91, Hearings under the Administrative Procedure Act, is corrected to reflect that the chapter is in a different title of TAC than the proposed rule.

Proposed new §556.5, Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements, replaces 40 TAC §94.5.

Proposed new §556.6, Competency Evaluation Requirements, replaces 40 TAC §94.6.

Proposed new §556.7, Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP), replaces 40 TAC §94.7.

Proposed new §556.8, Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP), replaces 40 TAC §94.8. In subsections (f) and (i), the references to 40 TAC Chapter 91 are corrected to reflect that the chapter is in a different title of TAC than the proposed rule.

Proposed new §556.9, Nurse Aide Registry and Renewal, replaces 40 TAC §94.9.

Proposed new §556.10, Expiration of Active Status, replaces 40 TAC §94.10.

Proposed new §556.11, Waiver, Reciprocity, and Exemption Requirements, replaces 40 TAC §94.11.

Proposed new §556.12, Findings and Inquiries, replaces 40 TAC §94.12. In subsection (d), the reference to 40 TAC Chapter 91 is corrected to reflect that the chapter is in a different title of TAC than the proposed rule.

Proposed new §556.13, Alternate Licensing Requirements for Military Service Personnel, replaces 40 TAC §94.13.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

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

(5) the proposed rules will create a new rule;

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

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed new rules are substantially the same as the rules in Chapter 94 being proposed for repeal.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT

Cecile Erwin Young, Interim Executive Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be the consolidation of all HHSC rules in new Title 26, Part 1 of the Texas Administrative Code.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on New Chapter 556" in the subject line.

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation of, and provision of services by, the health and human services system, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code, Chapter 250, which requires HHSC to maintain a Nurse Aide Registry.

The new rules implement Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code, Chapter 250.

§556.1. Basis.

The chapter implements the requirements for training and evaluating the competency of nurse aides employed in nursing facilities that participate in Medicaid, Medicare, or both, and for maintaining a registry of nurse aides, required by §1819(b)(5) and §1919(b)(5) of the Social Security Act; the Code of Federal Regulations, Title 42, §§483.150-483.154; and Texas Health and Safety Code, Chapter 250.

§556.2. Definitions.

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

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Act--The Social Security Act, codified at United States Code, Title 42, Chapter 7.

(3) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(4) Active status--The designation given to a nurse aide listed on the NAR who is eligible to work in a nursing facility.

(5) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(6) Competency evaluation--A written or oral examination and a skills demonstration administered by a skills examiner to test the competency of a trainee.

(7) Competency evaluation application--An HHSC form used to request HHSC approval to take a competency evaluation.

(8) Curriculum--The publication titled Texas Curriculum for Nurse Aides in Long Term Care Facilities developed by HHSC.

(9) Direct supervision--Observation of a trainee performing skills in a NATCEP.

(10) EMR--Employee misconduct registry. The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(11) Facility--A nursing facility that participates in Medicaid, a skilled nursing facility that participates in Medicare, or a nursing facility that participates in both Medicaid and Medicare.

(12) Facility-based NATCEP--A NATCEP offered by or in a facility.

(13) General supervision--Guidance and ultimate responsibility for another person in the performance of certain acts.

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

(15) IR--Informal review. An opportunity for a nurse aide to dispute a finding of misconduct made by HHSC by providing testimony and supporting documentation to an impartial HHSC staff person.

(16) Licensed health professional--A person licensed to practice healthcare in the state of Texas including:

(A) a physician;

(B) a physician assistant;

(C) a physical, speech, or occupational therapist;

(D) a physical or occupational therapy assistant;

(E) a registered nurse;

(F) a licensed vocational nurse; or

(G) a licensed social worker.

(17) Licensed nurse--A registered nurse or licensed vocational nurse.

(18) LVN--Licensed vocational nurse. An individual licensed by the Texas Board of Nursing to practice as a licensed vocational nurse.

(19) Military service member--A person who is on active duty.

(20) Military spouse--A person who is married to a military service member.

(21) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(22) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(23) NAR--Nurse Aide Registry. A listing of nurse aides, maintained by HHSC, that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(24) NATCEP--Nurse aide training and competency evaluation program. A program approved by HHSC to train and evaluate an individual's ability to work as a nurse aide in a facility.

(25) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(26) Non-facility-based NATCEP--A NATCEP not offered by or in a facility.

(27) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse and who has successfully completed a NATCEP or has been determined competent by waiver or reciprocity. This term does not include an individual who is a licensed health professional or a registered dietitian or who volunteers services without monetary compensation.

(28) Nurse aide training and competency evaluation program (NATCEP) application--A HHSC form used to request HHSC initial approval to offer a NATCEP, to renew approval to offer a NATCEP, or to request HHSC approval of changed information in an approved NATCEP application.

(29) Nursing services--Services provided by nursing personnel that include, but are not limited to:

(A) promotion and maintenance of health;

(B) prevention of illness and disability;

(C) management of health care during acute and chronic phases of illness;

(D) guidance and counseling of individuals and families; and

(E) referral to other health care providers and community resources when appropriate.

(30) Performance record--An evaluation of a trainee's performance of major duties and skills taught by a NATCEP.

(31) Person--A corporation, organization, partnership, association, natural person, or any other legal entity that can function legally.

(32) Program director--An individual who is approved by HHSC and meets the requirements in §556.5(a) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(33) Program instructor--An individual who is approved by HHSC to conduct the training in a NATCEP and who meets the requirements in §556.5(b) of this chapter.

(34) Resident--An individual accepted for care or residing in a facility.

(35) RN--Registered nurse. An individual licensed by the Texas Board of Nursing to practice professional nursing.

(36) Skills examiner--An individual who is approved by HHSC and meets the requirements in §556.5(d) of this chapter.

(37) Trainee--An individual who is enrolled in and attending, but has not completed, a NATCEP.

§556.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.

(a) To train nurse aides, a facility must apply for and obtain approval from HHSC to offer a NATCEP or the facility must contract with another entity offering a NATCEP.

(b) A person that wants to offer a NATCEP must file a complete NATCEP application with HHSC.

(c) A person applying to offer a NATCEP must submit a separate NATCEP application for each classroom location.

(d) A NATCEP application must identify one or more facilities that the NATCEP uses as a clinical site.

(e) HHSC does not approve a NATCEP offered by or in a facility if, within the previous two years, the facility:

(1) has operated under a waiver concerning the services of a registered nurse under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) has been subjected to an extended or partially extended survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) has been assessed a civil money penalty of not less than $5,000 as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) has been subjected to denial of payment under Title XVIII or Title XIX of the Act;

(5) has operated under state-appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Act; or

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2) of the Act.

(f) A facility that is prohibited from offering a NATCEP under subsection (e) of this section must contract with a person who has not been employed by the facility or by the facility's owner to offer NATCEP in accordance with §1819(f)(2) and §1919(f)(2) of the Act if:

(1) the NATCEP is offered to employees of the facility that is prohibited from training nurse aides under subsection (e) of this section;

(2) the NATCEP is offered in, but not by, the prohibited facility;

(3) there is no other NATCEP offered within a reasonable distance from the facility; and

(4) an adequate environment exists for operating a NATCEP in the facility.

(g) A person who wants to contract with a facility in accordance with subsection (f) of this section must submit a completed application to HHSC in accordance with §556.4 of this chapter (relating

to Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and include the name of the prohibited facility in the application. HHSC may withdraw the application within two years of approving it if HHSC determines that the facility is no longer prohibited from offering a NATCEP.

(h) Before September 1, 2013, a NATCEP must provide at least 75 hours of training to a trainee. The 75 hours must include:

(1) 51 hours of classroom training; and

(2) 24 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(i) Effective September 1, 2013, a NATCEP must provide at least 100 hours of training to a trainee. The 100 hours must include:

(1) 60 hours of classroom training; and

(2) 40 hours of clinical training, which includes care of residents and has at least one program instructor for every 10 trainees.

(j) A NATCEP must teach the curriculum established by HHSC and described in the Code of Federal Regulations, Title 42, §483.152. The NATCEP must include at least 16 introductory hours of classroom training in the following areas before a trainee has any direct contact with a resident:

(1) communication and interpersonal skills;

(2) infection control;

(3) safety and emergency procedures, including the Heimlich maneuver;

(4) promoting a resident's independence;

(5) respecting a resident's rights;

(6) basic nursing skills, including:

(A) taking and recording vital signs;

(B) measuring and recording height and weight;

(C) caring for a resident's environment;

(D) recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(E) caring for a resident when death is imminent;

(7) personal care skills, including:

(A) bathing;

(B) grooming, including mouth care;

(C) dressing;

(D) toileting;

(E) assisting with eating and hydration;

(F) proper feeding techniques;

(G) skin care; and

(H) transfers, positioning, and turning;

(8) mental health and social service needs, including:

(A) modifying the aide's behavior in response to a resident's behavior;

(B) awareness of developmental tasks associated with the aging process;

(C) how to respond to a resident's behavior;

(D) allowing a resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(E) using a resident's family as a source of emotional support;

(9) care of cognitively impaired residents, including:

(A) techniques for addressing the unique needs and behaviors of a resident with a dementia disorder including Alzheimer's disease;

(B) communicating with a cognitively impaired resident;

(C) understanding the behavior of a cognitively impaired resident;

(D) appropriate responses to the behavior of a cognitively impaired resident; and

(E) methods of reducing the effects of cognitive impairments;

(10) basic restorative services, including:

(A) training a resident in self care according to the resident's abilities;

(B) use of assistive devices in transferring, ambulation, eating, and dressing;

(C) maintenance of range of motion;

(D) proper turning and positioning in bed and chair;

(E) bowel and bladder training; and

(F) care and use of prosthetic and orthotic devices; and

(11) a resident's rights, including:

(A) providing privacy and maintenance of confidentiality;

(B) promoting the resident's right to make personal choices to accommodate their needs;

(C) giving assistance in resolving grievances and disputes;

(D) providing needed assistance in getting to and participating in resident, family, group, and other activities;

(E) maintaining care and security of the resident's personal possessions;

(F) promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff; and

(G) avoiding the need for restraints in accordance with current professional standards.

(k) A NATCEP must have a program director and a program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval. The program director and program instructor must meet the requirements of §556.5(a) and (b) of this chapter (relating to Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements).

(l) A NATCEP must verify that a trainee:

(1) is not listed on the NAR in revoked status;

(2) is not listed as unemployable on the EMR;

(3) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the five years immediately before participating in the NATCEP.

(m) A NATCEP must ensure that a trainee:

(1) completes the first 16 introductory hours of training (Section I of the curriculum) before having any direct contact with a resident;

(2) only performs services for which the trainee has been trained and has been found to be proficient by a program instructor;

(3) is under the direct supervision of a licensed nurse when performing skills as part of a NATCEP until the trainee has been found competent by the program instructor to perform that skill;

(4) is under the general supervision of a licensed nurse when providing services to a resident after a trainee has been found competent by the program instructor;

(5) is clearly identified as a trainee during the clinical training portion of the NATCEP.

(n) A NATCEP must submit a NATCEP application to HHSC if the information in an approved NATCEP application changes. A NATCEP may not continue training or start new training until HHSC approves the change. HHSC conducts a review of the NATCEP information if HHSC determines the changes are substantive.

(o) A NATCEP must use a HHSC performance record to document major duties or skills taught, trainee performance of a duty or skill, satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and the employer, if applicable, will receive a copy of the performance record.

(p) A NATCEP must maintain records and make them available to HHSC or its designees at any reasonable time. The records must include:

(1) dates and times of all classroom and clinical training;

(2) full name and social security number of a trainee;

(3) attendance record of a trainee;

(4) final course grade for the training portion of the NATCEP that indicates pass or fail for a trainee; and

(5) daily sign-in records for classroom and clinical training.

(q) A facility must not charge a nurse aide for any portion of the NATCEP, including any fees for textbooks or other required course materials, if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide begins a NATCEP.

(r) HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to complete a NATCEP if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after completing the NATCEP.

(s) HHSC must approve a NATCEP before the NATCEP solicits or enrolls trainees.

(t) HHSC approval of a NATCEP only applies to the required curriculum and hours. HHSC does not approve additional content or hours.

(u) A new employee or trainee orientation given by a facility to a nurse aide employed by the facility does not constitute a part of a NATCEP.

(v) A NATCEP that provides training to renew a nurse aide's listing on the NAR must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease.

§556.4. Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) A person that wants to offer a NATCEP must complete a NATCEP application on forms prescribed by HHSC and submit the application to HHSC.

(b) HHSC determines whether to approve or deny the NATCEP application.

(c) Within 90 days after HHSC receives a complete NATCEP application, HHSC notifies a NATCEP applicant of approval or proposed denial of a NATCEP application, or notifies the applicant of a deficiency or error in accordance with subsection (d) of this section. If HHSC proposes to deny the application due to the applicant's noncompliance with the requirements of the Act or this chapter, HHSC provides the reason for the denial in the notice.

(d) If HHSC finds a deficiency or error in a NATCEP application, HHSC notifies the applicant in writing of the deficiency or error and gives the applicant an opportunity to correct the deficiency or error. The applicant must submit the additional or corrected information to HHSC, in writing, within 10 days after the applicant receives notice of the deficiency or error.

(e) If HHSC proposes to deny a NATCEP application based on the NATCEP's failure to comply with §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements), or §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the applicant may request a hearing to challenge the denial. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act). 1 TAC §357.484 (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If an applicant does not make a timely request for a hearing, the applicant waives a hearing and HHSC may deny the NATCEP application.

§556.5. Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements.

(a) Program director. A program director must directly perform training or have general supervision of the program instructor and supplemental trainers. A NATCEP must have a program director when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)) and to maintain HHSC approval.

(1) The program director must:

(A) be an RN in the state of Texas;

(B) have a minimum of two years of nursing experience, with at least one year of providing long term care services in a facility; and

(C) have completed a course that focused on teaching adult students or have experience in teaching adult students or supervising nurse aides.

(2) In a facility-based NATCEP, the director of nursing (DON) for the facility may be approved as the program director, but must not conduct the training.

(3) A program director may supervise more than one NATCEP.

(4) A program director's responsibilities include, but are not limited to:

(A) directing the NATCEP in compliance with the Act and this chapter;

(B) directly performing training or having general supervision of the program instructor and supplemental trainers;

(C) ensuring that NATCEP records are maintained;

(D) determining if trainees have passed the training portion of the NATCEP;

(E) signing a competency evaluation application completed by a trainee who has passed the training portion of the NATCEP; and

(F) signing a certificate of completion or a letter on letterhead stationery of the NATCEP or the facility, stating that the trainee passed the training portion of the NATCEP if the trainee does not take the competency evaluation with the same NATCEP. The certificate or letter must include the date training was completed, the total training hours completed, and the official NATCEP name and number on file with HHSC.

(5) A NATCEP must submit a NATCEP application for HHSC approval if the program director of the NATCEP changes.

(b) Program instructor. A NATCEP must have at least one qualified program instructor when the NATCEP applies for initial approval by HHSC in accordance with §556.7 of this chapter and when training occurs.

(1) A program instructor must:

(A) be a licensed nurse;

(B) have a minimum of one year of nursing experience in a facility;

(C) have completed a course that focused on teaching adult students or have experience teaching adult students or supervising nurse aides; and

(D) work under the general supervision of the program director or be the program director.

(2) The program instructor is responsible for conducting the classroom and clinical training of the NATCEP under the general supervision of the program director.

(3) An applicant for a NATCEP must certify on the NATCEP application that all program instructors meet the requirements in paragraph (1)(A) - (D) of this subsection.

(4) A NATCEP must submit a NATCEP application for HHSC approval if a program instructor of the NATCEP changes.

(c) Supplemental trainers. Supplemental trainers may supplement the training provided by the program instructor in a NATCEP.

(1) A supplemental trainer must be a licensed health professional acting within the scope of the professional's practice and have at least one year of experience in the field of instruction.

(2) The program director must select and supervise each supplemental trainer.

(3) A supplemental trainer must not act in the capacity of the program instructor without HHSC approval. To request approval, a NATCEP must submit a NATCEP application to HHSC.

(d) Skills examiner. A skills examiner must administer a competency evaluation.

(1) HHSC or its designee approves an individual as a skills examiner if the individual:

(A) is an RN;

(B) has a minimum of one year of professional experience in providing care for the elderly or chronically ill of any age; and

(C) has completed a skills training seminar conducted by HHSC or its designee.

(2) A skills examiner must:

(A) adhere to HHSC standards for each skill examined;

(B) conduct a competency evaluation in an objective manner according to the criteria established by HHSC;

(C) validate competency evaluation results on forms prescribed by HHSC;

(D) submit prescribed forms and reports to HHSC or its designee; and

(E) not administer a competency evaluation to an individual who participates in a NATCEP for which the skills examiner was the program director, the program instructor, or a supplemental trainer.

§556.6. Competency Evaluation Requirements.

(a) A skills examiner must administer a competency evaluation.

(b) A trainee is eligible to take a competency evaluation if the trainee has successfully completed the training portion of a NATCEP, as determined by the program director, or is eligible under §556.11 of this chapter (relating to Waiver, Reciprocity, and Exemption Requirements).

(c) If a trainee cannot take a competency evaluation at the location where the trainee received training, the trainee may take a competency evaluation at another approved NATCEP that offers the competency evaluation and accepts the trainee for a competency evaluation.

(d) An eligible trainee who does not take a competency evaluation at the location where the trainee received training must obtain from the program director a signed competency evaluation application and a certificate or letter of completion of training. The trainee must arrange with another approved NATCEP to take the competency evaluation and must follow the instructions on the competency evaluation application.

(e) A NATCEP must:

(1) provide a facility where a trainee may perform the skills demonstration and a location where a trainee may take the written or oral examination;

(2) offer a competency evaluation to its own trainees promptly after successful completion of the training portion of a NATCEP;

(3) administer a competency evaluation to other eligible trainees the NATCEP has accepted for the competency evaluation;

(4) schedule a competency evaluation; and

(5) ensure that trainees accurately complete competency evaluation applications.

(f) A trainee must:

(1) take a competency evaluation within 24 months after completing the training portion of a NATCEP;

(2) verify the arrangements for competency evaluations;

(3) complete a competency evaluation application and submit the application in accordance with application instructions;

(4) request another competency evaluation if the trainee fails a competency evaluation; and

(5) meet any other procedural requirements specified by HHSC or its designated skills examiner.

(g) A competency evaluation must consist of:

(1) a skills demonstration that requires the trainee to demonstrate five randomly selected skills drawn from a pool of skills that are generally performed by nurse aides, including all personal care skills listed in the curriculum; and

(2) a written or oral examination, which includes 60 scored multiple choice questions selected from a pool of test items that address each course requirement in the curriculum. Written examination questions must be printed in a test booklet with a separate answer sheet. An oral examination must be a recorded presentation read from a prepared text in a neutral manner that includes questions to test reading comprehension.

(h) A trainee with a disability, including a trainee with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the competency evaluation under the Americans with Disabilities Act.

(i) To successfully complete a NATCEP, a trainee must pass:

(1) the skills demonstration, as determined by HHSC; and

(2) the written or oral examination, as determined by HHSC.

(j) A trainee who fails the skills demonstration or the written or oral examination may retake the competency evaluation twice.

(1) A trainee must be advised of the areas of the competency evaluation that the trainee did not pass.

(2) If a trainee fails a competency evaluation three times, the trainee must complete the training portion of a NATCEP before taking a competency evaluation again.

(k) HHSC informs a trainee before taking a competency evaluation that HHSC records successful completion of the competency evaluation on the NAR.

(l) HHSC records successful completion of the competency evaluation on the NAR within 30 days after the date the trainee passes the competency evaluation.

(m) A facility must not offer or serve as a competency evaluation site if the facility is prohibited from offering a NATCEP under the provisions of §556.3(e) of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(n) A facility must not charge a nurse aide for any portion of a competency evaluation if the nurse aide is employed by or has received an offer of employment from a facility on the date the nurse aide takes the competency evaluation.

(o) HHSC reimburses a nurse aide for a portion of the costs incurred by the nurse aide to take a competency evaluation if the nurse aide is employed by or has received an offer of employment from a facility within 12 months after taking the competency evaluation.

§556.7. Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) A NATCEP must apply to have its approval renewed every two years. HHSC sends a notice of renewal to a NATCEP at least 60 days before the expiration date of an approval.

(b) A NATCEP must submit a NATCEP application at least 30 days before the expiration date of an approval. If a NATCEP does not file an application to renew an approval at least 30 days before the expiration of the approval, the approval expires.

(c) HHSC uses the results of an on-site visit to determine NATCEP compliance with the Act and this chapter and to decide whether to renew the approval of a NATCEP.

(d) HHSC may conduct an on-site review of a NATCEP at any reasonable time.

(e) HHSC provides written notification to a NATCEP of deficiencies found during an on-site review.

(1) If a NATCEP receives a notification of deficiencies from HHSC, the NATCEP must submit a written response to HHSC, which must include a plan of correction (POC) to correct all deficiencies.

(2) HHSC may direct a NATCEP to comply with the requirements of the Act and this chapter.

(3) HHSC may not renew the approval of a NATCEP that does not meet the requirements of the Act and this chapter by failing to provide an adequate POC.

(f) A NATCEP approved by HHSC may provide in-service education to a nurse aide that is necessary to have a listing on the NAR renewed.

(g) A NATCEP must receive approval or an exemption under Texas Education Code Chapter 132 (relating to Career Schools and Colleges).

§556.8. Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) HHSC immediately withdraws approval of a facility-based NATCEP if the facility where the NATCEP is offered has:

(1) been granted a waiver concerning the services of an RN under §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(i) - (ii) of the Act;

(2) been subject to an extended (or partially extended) survey under §1819(g)(2)(B)(i) or §1919(g)(2)(B)(i) of the Act;

(3) been assessed a civil money penalty of not less than $5,000 as described in §1819(h)(2)(B)(ii) or §1919(h)(2)(A)(ii) of the Act;

(4) been subject to denial of payment under Title XVIII or Title XIX of the Act;

(5) operated under state-appointed or federally appointed temporary management to oversee the operation of the facility under §1819(h) or §1919(h) of the Act;

(6) had its participation agreement terminated under §1819(h)(4) or §1919(h)(1)(B)(i) of the Social Security Act;

(7) pursuant to state action, closed or had its residents transferred under §1919(h)(2); or

(8) refused to permit unannounced visits by HHSC.

(b) HHSC withdraws approval of a NATCEP if the NATCEP does not comply with §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(c) If HHSC withdraws approval of a NATCEP for failure to comply with §556.3 of this chapter, HHSC does not approve the NATCEP for at least two years after the date the approval was withdrawn.

(d) If HHSC proposes to withdraw approval of a NATCEP based on subsection (a) of this section, HHSC notifies the NATCEP by certified mail of the facts or conduct alleged to warrant the withdrawal. HHSC mails the notice to the facility's last known address as shown in HHSC records.

(e) A dually certified facility that offers a NATCEP may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself, in accordance with 42 Code of Federal Regulations (CFR), Part 498.

(f) A facility that offers a NATCEP and that participates only in Medicaid may request a hearing to challenge the findings of noncompliance that led to the withdrawal of approval of the NATCEP, but not the withdrawal of approval of the NATCEP itself. A hearing is governed by 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act), except the facility must request the hearing within 60 days after receipt of the notice described in subsection (d) of this section, as allowed by 42 CFR §431.153.

(g) A facility may request a hearing under subsection (e) or (f) of this section, but not both.

(h) If the finding of noncompliance that led to the denial of approval of the NATCEP by HHSC is overturned, HHSC rescinds the denial of approval of the NATCEP.

(i) If HHSC proposes to withdraw approval of a NATCEP based on §556.3 of this chapter or §556.7 of this chapter (relating to Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the NATCEP may request a hearing to challenge the withdrawal. A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedures Act). 1 TAC §357.484 of this title (relating to Request for a Hearing) requires a hearing to be requested in writing within 15 days after the date the notice is received by the applicant. If a NATCEP does not make a timely request for a hearing, the applicant has waived the opportunity for a hearing and HHSC may withdraw the approval.

(j) A trainee who started a NATCEP before HHSC sent notice that it was withdrawing approval of the NATCEP may complete the NATCEP.

§556.9. Nurse Aide Registry and Renewal.

(a) To be listed on the NAR as having active status, a nurse aide must successfully complete a NATCEP, as described in §556.6(i) of this chapter (relating to Competency Evaluation Requirements).

(b) HHSC does not charge a fee to list a nurse aide on the NAR or to renew the nurse aide's listing of active status on the NAR.

(c) A nurse aide listed on the NAR must inform HHSC of the nurse aide's current address and telephone number.

(d) A listing of active status on the NAR expires 24 months after the nurse aide is listed on the NAR or 24 months after the last date of verified employment as a nurse aide, whichever is earlier. To renew active status on the NAR, the following requirements must be met:

(1) A facility must submit a HHSC Employment Verification form to HHSC that documents that the nurse aide has performed paid nursing or nursing-related services at the facility during the preceding year.

(2) A nurse aide must submit a HHSC Employment Verification form to HHSC to document that the nurse aide has performed paid nursing or nursing-related services, if documentation is not submitted in accordance with paragraph (1) of this subsection by the facility or facilities where the nurse aide was employed.

(3) A nurse aide must complete at least 24 hours of in-service education every two years. The in-service education must include training in geriatrics and the care of residents with a dementia disorder, including Alzheimer's disease. The in-service education must be provided by:

(A) a facility;

(B) an approved NATCEP;

(C) HHSC; or

(D) a healthcare entity, other than a facility, licensed or certified by HHSC; by the Department of State Health Services; or by the Board of Nursing.

(4) No more than 12 hours of the in-service education required by paragraph (3) of this subsection may be provided by an entity described in paragraph (3)(D) of this subsection.

§556.10. Expiration of Active Status.

(a) A nurse aide's status on the NAR is changed to expired if:

(1) the nurse aide has not performed nursing-related services or acted as a nurse aide for monetary compensation for 24 consecutive months; or

(2) effective September 1, 2013, the nurse aide has not completed 24 hours of in-service education during the preceding two years.

(b) A nurse aid whose status is listed as expired must complete a NATCEP or a competency evaluation to be listed on the NAR with active status.

§556.11. Waiver, Reciprocity, and Exemption Requirements.

(a) HHSC may waive the requirement for a nurse aide to take the NATCEP specified in §556.3 of this chapter (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements) and place a nurse aide on the NAR on active status if the nurse aide:

(1) submits proof of completing a nurse aide training course of at least 100 hours duration before July 1, 1989;

(2) submits a HHSC Employment Verification form to HHSC to document that the nurse aide performed nursing or nursing-related services for monetary compensation at least once every two years since July 1, 1989;

(3) is not listed as unemployable on the EMR;

(4) has not been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) completes the HHSC Waiver of Nurse Aide Training and Competency Evaluation Program form.

(b) HHSC places a nurse aide on the NAR by reciprocity if:

(1) the nurse aide is listed as having active status on another state's registry of nurse aides;

(2) the other state's registry of nurse aides is in compliance with the Act;

(3) the nurse aide is not listed as unemployable on the EMR;

(4) the nurse aide has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years; and

(5) the nurse aide completes a HHSC Reciprocity form and submits it to HHSC.

(c) A person is eligible to take a competency evaluation with an exemption from the nurse aide training specified in §556.3 of this chapter if the individual:

(1) meets one of the following requirements for eligibility:

(A) is seeking renewal under §556.9 of this chapter (relating to Nurse Aide Registry and Renewal);

(B) has successfully completed at least 100 hours of training at a NATCEP in another state within the preceding 24 months but has not taken the competency evaluation or been placed on an NAR in another state;

(C) has successfully completed at least 100 hours of military training, equivalent to civilian nurse aide training, on or after July 1, 1989;

(D) has successfully completed an RN or LVN program at an accredited school of nursing in the United States within the preceding 24 months, and:

(i) is not licensed as an RN or LVN in the state of Texas; and

(ii) has not held a license as an RN or LVN in another state that has been revoked; or

(E) is enrolled or has been enrolled within the preceding 24 months in an accredited school of nursing in the United States and demonstrates competency in providing basic nursing skills in accordance with the school's curriculum;

(2) is not listed as unemployable on the EMR;

(3) has not been convicted of a criminal offense listed in THSC, §250.006(a), or convicted of a criminal offense listed in THSC, §250.006(b) within the preceding five years;

(4) submits documentation to verify at least one of the requirements in paragraph (1) of this subsection;

(5) arranges for a facility or NATCEP to serve as a competency evaluation site; and

(6) before taking the competency evaluation, presents to the skills examiner an original letter from HHSC authorizing the person to take the competency evaluation.

§556.12. Findings and Inquiries.

(a) HHSC reviews and investigates allegations of abuse, neglect, or misappropriation of resident property by a nurse aide employed in a facility. If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, before entry of the finding on the NAR, HHSC provides the nurse aide an opportunity to dispute the finding through an informal review (IR) and a hearing as described in this section.

(b) If HHSC finds that a nurse aide committed an act of abuse, neglect or misappropriation of resident property, HHSC sends the nurse aide a written notice regarding the finding. The notice includes:

(1) a summary of the findings and facts on which the findings are based;

(2) a statement informing the nurse aide of the right to an IR to dispute HHSC findings;

(3) a statement informing the nurse aide that a request for an IR must be made within 10 days after the date the nurse aide receives the written notice; and

(4) the address and contact information for the local HHSC regional office, where the nurse aide must submit a request for an IR.

(c) If a nurse aide requests an IR, HHSC sets a date to allow the nurse aide to dispute the findings of the investigation of abuse, neglect, or misappropriation of resident property. The nurse aide may dispute the findings by providing testimony, in person or by telephone, to an impartial HHSC staff person at the local HHSC regional office.

(1) If the staff person does not uphold the findings, HHSC notifies the nurse aide of the results of the IR and closes the investigation. HHSC does not record information related to the investigation in the NAR.

(2) If the staff person upholds the findings, HHSC notifies the nurse aide of the results of the IR. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(3) If the nurse aide does not request an IR, or fails to appear for a requested IR, HHSC upholds the findings. The nurse aide may request a hearing in accordance with subsection (d) of this section.

(d) A nurse aide may request a hearing after receipt of HHSC notice of the results of an IR described in subsection (c)(2) of this section. 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and 40 TAC Chapter 91 (relating to Hearings Under the Administrative Procedure Act) govern the hearing, except that a nurse aide must request a formal hearing within 30 days after receipt of HHSC notice in compliance with 42 CFR §488.335. If the nurse aide fails to request a hearing, the nurse aide waives the opportunity for a hearing and HHSC enters the finding of abuse, neglect, or misappropriation of resident property, as appropriate, on the NAR.

(e) If HHSC receives an allegation that a nurse aide, who has a medication aide permit under Chapter 557 of this title (relating to Medication Aides--Program Requirements), committed an act of abuse, neglect, or misappropriation of resident property, HHSC investigates the allegation under this section regarding the nurse aide practice and under Chapter 557 of this title to determine if the allegation violates the medication aide practice. The investigations run concurrently. If after the investigations, the nurse aide requests hearings on the findings under the nurse aide practice and the medication aide practice, only one hearing, conducted in accordance with subsection (d) of this section, is available to the nurse aide.

(f) If HHSC finds that a nurse aide committed an act of abuse, neglect, or misappropriation of resident property, HHSC reports the finding to:

(1) the NAR;

(2) the nurse aide;

(3) the administrator of the facility in which the act occurred; and

(4) the administrator of the facility that employs the nurse aide, if different from the facility in which the act occurred.

(g) The NAR must include the findings involving a nurse aide listed on the NAR, as well as any brief statement of the nurse aide disputing the findings.

(h) The information on the NAR is available to the public.

(i) If an inquiry is made about a nurse aide's status on the NAR, HHSC must:

(1) verify if the nurse aide is listed on the NAR;

(2) disclose information concerning a finding of abuse, neglect, or misappropriation of resident property involving the nurse aide; and

(3) disclose any statement by the nurse aide related to the finding.

(j) If a nurse aide works in a capacity other than a nurse aide in a facility and is listed as unemployable in the EMR, HHSC changes the status of the nurse aide's listing on the NAR to revoked or suspended. The due process available to the nurse aide before placement on the EMR satisfies the due process required before HHSC changes the nurse aide's status on the NAR.

(k) If HHSC lists a nurse aide's status on the NAR as suspended or revoked because of a single finding of neglect, the nurse aide may request that HHSC remove the finding after the finding has been listed on the NAR for one year. To request removal of the finding, the nurse aide must submit a HHSC Petition for Removal of Neglect Finding to HHSC in accordance with the petition's instructions.

§556.13. Alternate Licensing Requirements for Military Service Personnel.

(a) Additional time for in-service education.

(1) HHSC gives a nurse aide an additional two years to complete in-service education required for a nurse aide to maintain an active listing on the NAR, as described in §556.9(d)(3) of this chapter (relating to Nurse Aide Registry and Renewal), if HHSC receives and approves a request for additional time to complete in-service training from a nurse aide in accordance with this subsection.

(2) To request additional time to complete in-service education, a nurse aide must submit a written request for additional time to HHSC before the expiration date of the nurse aide's certification. The nurse aide must include with the request documentation of the nurse aide's status as a military service member that is acceptable to HHSC. Documentation as a military service member that is acceptable to HHSC includes a copy of a military service order issued by the United States Armed Forces, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the nurse aide must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete in-service education submitted in accordance with this subsection if HHSC determines that the nurse aide is a military service member, except HHSC does not approve a request if HHSC granted the nurse aide a previous extension and the nurse aide did not complete the in-service education requirements during the previous extension period.

(b) Renewal of expired listing.

(1) HHSC changes the status of a listing from expired to active if HHSC receives and approves a request for an active status listing from a former nurse aide in accordance with this subsection.

(2) To request an active status listing, a former nurse aide must submit a written request with the documents required for renewal in accordance with §556.9(d) of this chapter within five years after the former nurse aide's listing expired. The former nurse aide must include with the request documentation of the former nurse aide's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former nurse aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former nurse aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former nurse aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former nurse aide must submit the requested documentation.

(5) HHSC approves a request for an active status listing submitted in accordance with this subsection if HHSC determines that:

(A) the former nurse aide meets the requirements for renewal described in §556.9(d)(1) - (4) of this chapter;

(B) the former nurse aide is a military service member, military veteran, or military spouse;

(C) the former nurse aide has not committed an offense listed in Texas Health and Safety Code (THSC) §250.006(a) and has not committed an offense listed in THSC §250.006(b) during the five years before the date the former nurse aide submitted the initial license application; and

(D) the former nurse aide is not listed on the EMR.

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

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802636
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 487-3419

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CHAPTER 557. MEDICATION AIDES--PROGRAM REQUIREMENTS

26 TAC §§557.101, 557.103, 557.105, 557.107, 557.109, 557.111, 557.113, 557.115, 557.117, 557.119, 557.121, 557.123, 557.125, 557.127 - 557.129

The Texas Health and Human Services Commission (HHSC) proposes new Chapter 557, Medication Aides--Program Requirements, comprised of §§557.101, 557.103, 557.105, 557.107, 557.109, 557.111, 557.113, 557.115, 557.117, 557.119, 557.121, 557.123, 557.125, and 557.127 - 557.129, in Title 26, Part 1.

BACKGROUND AND PURPOSE

The Texas Secretary of State created Title 26, Part 1, of the Texas Administrative Code to consolidate rules that govern functions of HHSC. These rules are currently in Titles 1, 25, and 40. As part of the consolidation into Title 26, HHSC proposes new rules in Chapter 557 to replace rules in Title 40, Chapter 95, Medication Aides--Program Requirements. The rules in Chapter 95 are proposed for repeal elsewhere in this issue of the *Texas Register.* The proposed new rules are substantially the same as the rules that are proposed for repeal.

The proposed new rules change references to the Department of Aging and Disability Services (DADS) that were in Chapter 95 to HHSC to reflect that DADS was abolished effective September 1, 2017, and its functions have transferred to HHSC. In addition, the proposed new rules change references to rules in Chapter 95 being proposed for repeal to the corresponding rules in proposed new Chapter 557.

SECTION-BY-SECTION SUMMARY

Proposed new §557.101, Introduction, replaces 40 TAC §95.101. In subsection (c), paragraphs (7) - (12) are renumbered to reflect the deletion of the definition of "DADS" and the addition of the definition of "HHSC." In subsection (c)(11), which is the definition of "HCSSA," the reference to 40 TAC Chapter 97, Licensing Standards for Home and Community Support Services Agencies, is corrected to reflect that the chapter is in a different title of TAC than the proposed rule.

Proposed new §557.103, Requirements for Administering Medications, replaces 40 TAC §95.103.

Proposed new §557.105, Allowable and Prohibited Practices of a Medication Aide, replaces 40 TAC §95.105.

Proposed new §557.107, Training Requirements; Nursing Graduates; Reciprocity, replaces 40 TAC §95.107.

Proposed new §557.109, Application Procedures, replaces 40 TAC §95.109.

Proposed new §557.111, Examination, replaces 40 TAC §95.111.

Proposed new §557.113, Determination of Eligibility, replaces 40 TAC §95.113.

Proposed new §557.115, Permit Renewal, replaces 40 TAC §95.115.

Proposed new §557.117, Changes, replaces 40 TAC §95.117.

Proposed new §557.119, Training Program Requirements, replaces 40 TAC §95.119. In subsection (a)(5), the reference to 40 TAC Chapter 91, Hearings under the Administrative Procedure Act, is corrected to reflect that the chapter is in a different title of TAC than the proposed rule.

Proposed new §557.121, Permitting of Persons with Criminal Backgrounds, replaces 40 TAC §95.121.

Proposed new §557.123, Violations, Complaints, and Disciplinary Actions, replaces 40 TAC §95.123. In subsection (c)(4), the reference to 40 TAC Chapter 91 is corrected to reflect that the chapter is in a different title of TAC than the proposed rule.

Proposed new §557.125, Requirements for Corrections Medication Aides, replaces 40 TAC §95.125.

Proposed new §557.127, Application Processing, replaces 40 TAC §95.127. In subsection (c), the reference to 40 TAC Chapter 91 is corrected to reflect that the chapter is in a different title of TAC than the proposed rule.

Proposed new §557.128, Home Health Medication Aides, replaces 40 TAC §95.128. In subsections (b)(4)(D), (b)(5), (d)(7), and (e)(5), the references to 40 TAC §§97.701, 97.298, and 97.404 are corrected to reflect that the sections are in a different title of TAC than the proposed rule.

Proposed new §557.129, Alternate Licensing Requirements for Military Service, replaces 40 TAC §95.129.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

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

(5) the proposed rules will create a new rule;

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

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed new rules are substantially the same as the rules in Chapter 95 being proposed for repeal.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT

Cecile Erwin Young, Interim Executive Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be the consolidation of all HHSC rules in new Title 26, Part 1 of the Texas Administrative Code.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on New Chapter 557" in the subject line.

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code, §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code, §142.023, which authorizes the HHSC executive commissioner to establish standards for home health medication aides, and §242.608, which authorizes the HHSC executive commissioner to adopt rules regulating medication aides in nursing facilities; and Texas Human Resources Code, §161.083, which authorizes the executive commissioner to establish minimum standards and requirements for the issuance of corrections medication aide permits.

The new rules implement Texas Government Code, §531.0055; Texas Health and Safety Code, §142.023 and §242.608; and Texas Human Resources Code, §161.083.

§557.101. Introduction.

(a) Purpose. The purpose of this chapter is to implement the provisions of the:

(1) Texas Health and Safety Code, Chapter 242, Subchapter N, concerning the administration of medications to facility residents;

(2) Texas Health and Safety Code, Chapter 142, Subchapter B, concerning the administration of medication by a home and community support services agency; and

(3) Texas Human Resource Code §161.083, concerning the administration of medication to an inmate in a correctional facility.

(b) Corrections medication aide permit requirements. Section 557.125 of this chapter (relating to Requirements for Corrections Medication Aides) applies to a corrections medication aide or an applicant for a corrections medication aide permit.

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

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(3) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(4) BON--Texas Board of Nursing.

(5) Client--An individual receiving home health, hospice, or personal assistance services from a HCSSA.

(6) Correctional facility--a facility operated by or under contract with the Texas Department of Criminal Justice.

(7) Day--Any day, including a Saturday, a Sunday, and a holiday.

(8) EMR--Employee misconduct registry. The registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(9) Examination--A written competency evaluation for medication aides administered by HHSC.

(10) Facility--An institution licensed under Texas Health and Safety Code, Chapter 242; a state supported living center as defined in Texas Health and Safety Code §531.002(19); a licensed intermediate care facility for an individual with an intellectual disability or related condition as defined in the Texas Health and Safety Code Chapter 252; an intermediate care facility for an individual with an intellectual disability or related condition operated by a community center as described in Texas Health and Safety Code, Chapter 534; or an assisted living facility licensed under Texas Health and Safety Code, Chapter 247.

(11) HCSSA--A home and community support services agency licensed under Texas Health and Safety Code Chapter 142 and 40 TAC Chapter 97 (relating to Licensing Standards for Home and Community Support Services Agencies).

(12) HHSC--The Texas Health and Human Services Commission.

(13) Licensed nurse--A licensed vocational nurse or an RN.

(14) LVN--Licensed vocational nurse. A person licensed by the BON, or who holds a license from another state recognized by the BON, to practice vocational nursing in Texas.

(15) Medication aide--A person who is issued a permit by HHSC under Texas Health and Safety Code Chapter 242, Subchapter N, Texas Human Resources Code, Chapter 161, Subchapter D, and Texas Health and Safety Code, Chapter 142, Subchapter B to administer medications to facility residents, correctional facility inmates, or to persons served by home and community support services agencies.

(16) Military service member--A person who is on active duty.

(17) Military spouse--A person who is married to a military service member.

(18) Military veteran--A person who has served on active duty and who was discharged or released from active duty.

(19) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

(20) NAR--Nurse aide registry. A state listing of nurse aides maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 250 that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(21) Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(22) Non-licensed direct care staff--Employees of facilities other than Medicare-skilled nursing facilities or Medicaid nursing facilities who are primarily involved in the delivery of services to assist with residents' activities of daily living or active treatment programs.

(23) Nurse aide--An individual who has completed a nurse aide training and competency evaluation program (NATCEP) approved by HHSC as meeting the requirements of 42 Code of Federal Regulations (CFR) §§483.15 - 483.154, or has been determined competent as provided in 42 CFR §483.150(a) and (b), and is listed as certified on HHSC nurse aide registry.

(24) PRN medication--Pro re nata medication. Medication administered as the occasion arises or as needed.

(25) Registered pharmacist--An individual currently licensed by the Texas Board of Pharmacy to practice pharmacy.

(26) RN--Registered nurse. A person who is licensed by the BON, or who holds a license from another state recognized by the BON, to practice professional nursing in Texas.

(27) TDCJ--Texas Department of Criminal Justice.

(28) Training program--A program approved by HHSC to instruct individuals to act as medication aides.

§557.103. Requirements for Administering Medications.

(a) General. A person may not administer medication to a resident in a facility or a correctional facility unless the person:

(1) holds a current license under state law which authorizes the licensee to administer medication; or

(2) if administering medication in a facility, holds a current permit issued under Texas Health and Safety Code, Chapter 242, Subchapter N, or if administering medication in a correctional facility, holds a current permit issued under Texas Human Resources Code §161.083 or Texas Health and Safety Code, Chapter 242, Subchapter N and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(b) Supervision and applicable law and rules. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the facility or correctional facility using the medication aide. A medication aide must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a facility or a correctional facility; and

(2) comply with HHSC rules applicable to personnel used in a facility or TDCJ rules applicable to personnel in a correctional facility.

(c) Governmental employees. Governmental employees may receive a permit to administer medications under this chapter as authorized by Texas Health and Safety Code §242.610(f) or Texas Human Resources Code §161.083:

(1) State supported living center employees and employees of an intermediate care facility for persons with an intellectual disability operated by a community center established under Texas Health and Safety Code, Chapter 534 must comply with subsection (b) of this section and §§557.105, 557.107, 557.109, 557.111, 557.113, 557.115, 557.117, 557.119, 557.121, and 557.123 of this chapter (relating to Allowable and Prohibited Practices of a Medication Aide; Training Requirements; Nursing Graduates; Reciprocity; Application Procedures; Examination; Determination of Eligibility; Permit Renewal; Changes; Training Program Requirements; Permitting of Persons with Criminal Backgrounds; and Violations, Complaints, and Disciplinary Actions).

(2) Correctional facility employees and employees of medical services contractors for a correctional facility who administer medication as medication aides must comply with §557.125 of this chapter (relating to Requirements for Corrections Medication Aides).

(d) Medication aides in nursing facilities. Persons employed as medication aides in a Medicare skilled nursing facility or a Medicaid nursing facility must comply with the requirements relating to nurse aides as set forth in United States Code, Part 42, §1396r(b)(5) and Chapter 556 of this title (relating to Nurse Aides).

(e) Exemptions.

(1) A person may administer medication to a resident in a facility without the license or permit as required in subsection (a) of this section, if the person is:

(A) a graduate nurse holding a temporary permit issued by the BON;

(B) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(C) a graduate vocational nurse holding a temporary permit issued by the BON;

(D) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(E) a trainee in a medication aide training program approved by HHSC under this chapter who is administering medications as part of the trainee's clinical experience.

(2) A student described in paragraph (1)(B), (D), or (E) of this subsection may administer medication only as part of the student's clinical experience.

(3) A person described in paragraph (1) of this subsection must act under the supervision of an individual as set forth in applicable law and rules.

§557.105. Allowable and Prohibited Practices of a Medication Aide.

(a) A medication aide under Texas Health and Safety Code, Chapter 242, Subchapter N, may:

(1) observe and report to the facility's charge licensed nurse reactions and side effects to medication shown by a resident;

(2) take and record vital signs before the administration of medication that could affect or change the vital signs;

(3) administer regularly prescribed medication to a resident if the medication aide:

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered from a unit dose pack; and

(C) documents the administration of the medication in the resident's clinical record;

(4) administer oxygen per nasal cannula or a non-sealing mask only in an emergency, after which the medication aide must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;

(6) administer previously ordered PRN medication, if:

(A) the facility's licensed nurse on duty or on call authorizes the medication;

(B) the medication aide documents in the resident's records the symptoms indicating the need for the medication and the time the symptoms occurred;

(C) the medication aide documents in the resident's records that the facility's licensed nurse was contacted, symptoms were described, and the licensed nurse granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication from the facility's licensed nurse on duty or on call each time the symptoms occur; and

(E) the medication aide ensures that the resident's record is co-signed by the licensed nurse who gave authorization by the end of the nurse's shift or, if the nurse was on call, by the end of the nurse's next shift;

(7) measure a prescribed amount of a liquid medication to be administered to a resident;

(8) break a tablet to be administered to a resident, if:

(A) the resident's medication card or its equivalent accurately documents how the tablet must be broken before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(9) crush medication, if the medication aide:

(A) obtains authorization to crush the medication from the licensed nurse on duty or on call; and

(B) documents the authorization on the resident's medication card or its equivalent; and

(10) electronically order a refill of medication from a pharmacy, if the refill request is signed by the licensed nurse on duty or on call.

(b) A medication aide under Texas Health and Safety Code, Chapter 242, Subchapter N, may not:

(1) administer medication by the injection route including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing treatments or any form of medication inhalation treatments;

(3) administer previously ordered PRN medication, except in accordance with subsection (a)(6) of this section;

(4) administer medication that, according to the resident's clinical records, has not been previously administered to the resident;

(5) calculate a resident's medication doses for administration;

(6) crush medication, except in accordance with subsection (a)(9) of this section;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a healthcare professional;

(9) order a resident's medications from a pharmacy, except in accordance with subsection (a)(10) of this section;

(10) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending physician;

(11) steal, divert, or otherwise misuse medication;

(12) violate any provision of the Texas Health and Safety Code or this chapter;

(13) fraudulently procure or attempt to procure a permit;

(14) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(15) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) If a practice is not described in subsection (a) of this section the practice is prohibited for a medication aide under Texas Health and Safety Code, Chapter 242, Subchapter N.

§557.107. Training Requirements; Nursing Graduates; Reciprocity.

(a) Each applicant for a permit issued under Texas Health and Safety Code, Chapter 242, Subchapter N, must complete a training program unless the applicant meets the requirements of subsection (c) or (e) of this section.

(b) Before submitting an application for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, an applicant must:

(1) be able to read, write, speak, and understand English;

(2) be at least 18 years of age;

(3) be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) be a graduate of an accredited high school or have proof of successfully passing a general educational development test;

(5) be employed in a facility as a nurse aide or nonlicensed direct care staff person on the first official day of an applicant's medication aide training program; and

(6) have been employed:

(A) as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility; or

(B) in a facility for 90 days as a nonlicensed direct care staff person during the 12-month period before the first official day of the applicant's medication aide training program;

(7) not have been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(a), and not have been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the permit application;

(8) not be listed as unemployable on the EMR; and

(9) not be listed with a revoked or suspended status on the NAR.

(c) A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter;

(2) successfully completed courses at the nursing school that cover HHSC curriculum for a medication aide training program;

(3) submits a statement, with the application for a permit and combined permit application and examination fee as provided in §557.109 of this chapter (relating to Application Procedures), on the form provided by HHSC, signed by the nursing school's administrator or other authorized individual, certifying that the person completed the courses specified in paragraph (2) of this subsection; and

(4) complies with subsection (e)(5) and (6) of this section.

(d) The administrator or other authorized individual referred to in subsection (c)(3) of this section is responsible for determining that the nursing school courses cover HHSC curriculum.

(e) A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, provided the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter.

(1) The graduate must submit an official application form to HHSC. The applicant must meet the requirements of subsection (b)(1) - (4), (7), and (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee as set out in §557.109(c) of this chapter.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and HHSC open book examination.

(5) The applicant must complete the open book examination and return it to HHSC by the date given in the examination notice.

(6) The applicant must complete HHSC written examination. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open-book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.

(9) HHSC notifies the applicant in writing of the examination results.

(f) A person who holds a valid license, registration, certificate, or permit as a medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, in effect at the time of application, may request a waiver of the training program requirement as follows:

(1) The applicant must submit an official application form to HHSC. The applicant must meet the requirements of subsection (b)(1) - (4), (7), and (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee required in §557.109(c) of this chapter.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, or other) for the state's licensing program, and a certified copy of the license or certificate for which the reciprocal permit is requested.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and HHSC open book examination.

(5) HHSC may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete HHSC open-book examination and return it to HHSC by the date given in the examination notice.

(7) The applicant must complete HHSC written examination. The site of the examination is determined by HHSC. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open-book or written examination may not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.

(10) HHSC notifies the applicant in writing of the examination results.

§557.109. Application Procedures.

(a) An applicant for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, who complies with §557.107(a) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) must submit to HHSC, no later than 20 days after enrollment in a training program, an application, including all required information and documentation on HHSC forms.

(b) HHSC considers an application under subsection (a) of this section as officially submitted when HHSC receives the permit application and examination fee.

(c) An applicant must pay the combined permit and examination fees by cashier's check or money order made payable to the Health and Human Services Commission, or by other HHSC-approved payment methods. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(1) The fee schedule is as follows:

(A) combined permit application and examination fee--$25;

(B) renewal fee--$15;

(C) late renewal fees for permit renewals made after the permit expires:

(i) $22.50 for an expired permit renewed from one to 90 days after expiration;

(ii) $30 for an expired permit renewed from 91 days to one year after expiration;

(iii) $30 for a former medication aide who meets the criteria in §557.115(c)(5) of this chapter (relating to Permit Renewal); and

(D) permit replacement fee--$5.

(2) An initial or a renewal application is considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(3) The fee schedule that applies to the correctional medication aide is in §557.125 of this chapter (relating to Requirements for Corrections Medication Aides), and the fee schedule that applies to the home health medication aide is in §557.128 of this chapter (relating to Home Health Medication Aides).

(d) An applicant must submit the following application materials:

(1) the general statement enrollment form, which must contain:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in §557.107(b) of this chapter were met before the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands materials submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to HHSC; and

(F) the applicant's signature, which has been dated and notarized; and

(2) a certified copy or a notarized photocopy of an unaltered, original, high school diploma or transcript or the written results of a general educational development (GED) test demonstrating that the applicant passed the GED test, unless the applicant is applying under §557.107(e) of this chapter.

(e) HHSC verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by subsection (d)(2) of this section. If HHSC is unable to verify the accreditation status of the school, testing service, or program, and HHSC requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to HHSC.

(f) HHSC sends a notice listing the additional materials required to an applicant who does not submit a complete application. An applicant must submit a complete application by the date of HHSC final exam.

(g) HHSC sends notice of HHSC application approval or deficiency to an applicant in accordance with §557.127 of this chapter (relating to Application Processing).

§557.111. Examination.

(a) HHSC gives a written examination to each applicant at a site determined by HHSC.

(1) The applicant must meet the requirements of §557.107 of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) and §557.109 of this chapter (relating to Application Procedures) before taking the written examination.

(2) The applicant is tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy that will be administered to a facility's residents.

(3) The examination must be given after the applicant has successfully completed the training program or met the requirements of §557.107(c) - (e) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity).

(4) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(5) Staff of a training program must notify HHSC at least four weeks prior to its requested examination date.

(6) HHSC determines the passing grade on the examination.

(7) If HHSC grades or reviews the examination, HHSC notifies the applicant of the results of the examination not later than the 30th day after the date the applicant took the examination.

(8) If a testing service grades or reviews the examination:

(A) HHSC notifies the applicant of the results of the examination not later than the 14th day after the date HHSC receives the results from the testing service; and

(B) if notice of the examination results will be delayed for longer than 90 days after the examination date, HHSC notifies the applicant of the reasons for the delay before the 90th day.

(9) HHSC may require a testing service to notify an applicant of the results of the applicant's examination.

(10) HHSC notifies in writing an applicant who fails the examination.

(A) HHSC may give an applicant under §557.107(a) of this chapter one subsequent examination, without additional payment of a fee, upon the applicant's written request to HHSC.

(B) A subsequent examination must be completed by the date given in the failure notification. The site of the examination is determined by HHSC.

(C) HHSC gives no further examinations if the student fails the subsequent examination, unless the student enrolls in and successfully completes another training program.

(D) If requested in writing by an applicant who fails the examination, HHSC furnishes the applicant with an analysis of the applicant's performance on the examination.

(b) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to HHSC. The examination must be completed within 45 days from the date of the originally scheduled examination. The rescheduled examination must be at a site determined by HHSC.

(c) An applicant whose application for a permit must be denied under §557.113 of this chapter (relating to Determination of Eligibility) is ineligible to take the examination.

§557.113. Determination of Eligibility.

(a) HHSC approves or denies each application for a permit.

(b) Notices of application approval, denial, or deficiency must be in accordance with §557.127 of this chapter (relating to Application Processing).

(c) HHSC denies an application for a permit if the person:

(1) does not meet the requirements in §557.107 of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) or §557.125 of this chapter (relating to Requirements for Corrections Medication Aides);

(2) fails to pass the examination prescribed by HHSC, as referenced in §557.111 of this chapter (relating to Examination), or developed by TDCJ, as referenced in §557.125(g) of this chapter;

(3) fails or refuses to properly complete or submit an application form or fee, or deliberately submits false information on any form or document required by HHSC;

(4) violates or conspires to violate the Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or any provision of this chapter;

(5) has a felony or misdemeanor conviction of a crime that directly relates to the duties and responsibilities of a medication aide as described in §557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);

(6) is listed with a revoked or suspended status on the HHSC NAR;

(7) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the permit application; or

(8) is listed as unemployable on the EMR.

(d) If, after review, HHSC determines that the application should be denied, HHSC gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §557.123(c)(3) of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

§557.115. Permit Renewal.

(a) General.

(1) When issued, an initial permit is valid for 12 months from the date of issue.

(2) A medication aide must renew the permit annually.

(3) Each medication aide is responsible for renewing the permit before the expiration date. Failure to receive notification from HHSC before the expiration date of the permit does not excuse the medication aide's failure to file for timely renewal.

(4) A medication aide must complete a seven hour continuing education program approved by HHSC before expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide must earn approved continuing education hours to have the permit renewed again.

(5) HHSC denies renewal of the permit of a medication aide who:

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or this chapter at the time of application for renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the renewal application;

(C) is listed as unemployable on the EMR;

(D) is listed with a revoked or suspended status on the NAR; or

(E) is in default on a guaranteed student loan as described in Texas Education Code §57.491.

(6) A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(b) Permit renewal procedures.

(1) After receiving proof of the successful completion of the seven hour continuing education requirement, HHSC sends notice of the expiration date of the permit, the amount of the renewal fee due, and a renewal form to the medication aide physical or email address listed in HHSC records.

(2) The renewal form, which includes the contact information and preferred mailing address of the medication aide and information on certain misdemeanor and felony convictions, must be completed and signed by the medication aide and returned to HHSC with the required renewal fee.

(3) HHSC issues a renewal permit to a medication aide who meets all requirements for renewal, including payment of the renewal fee.

(c) Late renewal procedures.

(1) If a medication aide submits a renewal application to HHSC that is late or incomplete, HHSC assesses the appropriate late fee described in §557.109(c)(1)(C) of this chapter (relating to Application Procedures). HHSC uses the postmark date to determine if a renewal application is late. If there is no postmark or the postmark is not legible, HHSC uses the date the renewal application was received and recorded by the HHSC Medication Aide Program to determine if the renewal application is late.

(2) A person whose permit has been expired for less than one year may renew the permit by submitting to HHSC:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year, or part of a year, since the permit expired; and

(D) proof of having earned, before expiration of the permit, seven hours in an approved continuing education program as required by subsection (a)(4) of this section.

(3) A person whose permit has been expired for 90 days or less must pay HHSC the late renewal fee stated in §557.109(c)(1)(C)(i) of this chapter (relating to Application Procedures) or §557.125(f)(3)(A) of this chapter (relating to Requirements for Corrections Medication Aides).

(4) A person whose permit has been expired for more than 90 days but less than one year must pay HHSC the late renewal fee stated in §557.109(c)(1)(C)(ii) or §557.125(f)(3)(B) of this chapter.

(5) A person who previously held a permit in Texas issued under Texas Health and Safety Code, Chapter 242, Subchapter N, may obtain a new permit without reexamination if the person holds a facility medication aide permit from another state, practiced in that state for at least the two years preceding the application date, and pays to HHSC the late renewal fee stated in §557.109(c)(1)(C)(iii) of this chapter.

(6) HHSC denies late renewal of the permit if a permit holder:

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code §161.083, or this chapter on the date HHSC receives the application for late renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the application for late renewal;

(C) is listed as unemployable on the EMR;

(D) is listed with a revoked or suspended status on the NAR; or

(E) is in default on a guaranteed student loan as described in Texas Education Code §57.491.

(d) A person whose permit has been expired for one year or more may not renew the permit. To obtain a new permit, the person must apply for a permit in accordance with §557.109 of this chapter (relating to Application Procedures) and in §557.111 of this chapter (relating to Examination).

§557.117. Changes.

(a) A medication aide must notify HHSC within 30 days after changing the medication aide's required contact information, including name, preferred mailing address, or email address.

(b) HHSC replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee as set out in §557.109(c) of this chapter (relating to Application Procedures) and §557.125(f) of this chapter (relating to Requirements for Corrections Medication Aides).

§557.119. Training Program Requirements.

(a) Application. An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on an HHSC form. Programs sponsored by state agencies for the training and preparation of their own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(1) All signatures on HHSC forms and supporting documentation must be originals.

(2) The application must include:

(A) the anticipated dates of the program;

(B) the location(s) of the classroom course(s);

(C) the name of the coordinator of the program;

(D) a list that includes the address and telephone number of each instructor and any other persons responsible for the conduct of the program; and

(E) an outline of the program content and curriculum if the curriculum covers more than HHSC established curricula.

(3) HHSC may conduct an inspection of the classroom site.

(4) HHSC sends notice of approval or proposed denial of the application to the program within 30 days after receiving a complete application. If HHSC proposes to deny the application due to noncompliance with the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, or this chapter, the reasons for denial are given in the notice.

(5) An applicant may request in writing a hearing on a proposed denial. The applicant must submit a request within 15 days after the applicant receives notice of the proposed denial. The hearing is governed by 1 TAC Chapter 357, Subchapter I (relating the Hearings under the Administrative Procedure Act); 40 TAC Chapter 91 (relating to Hearings under the Administrative Procedure Act); and Texas Government Code, Chapter 2001. If no request is made, the applicant has waived the opportunity for a hearing, and the proposed action may be taken.

(b) Basic training program.

(1) A training program must include the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in resident's clinical records, including PRN medications;

(E) minimum licensing standards for facilities covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the facility, including facility personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of medication aides in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to facility residents; and

(K) rules covering the medication aide program.

(2) The program must consist of 140 hours in the following sequence: 100 hours of classroom instruction and training; 20 hours of return skills demonstration laboratory; 10 hours of clinical experience, including clinical observation and skills demonstration under the direct supervision of a licensed nurse in a facility; and 10 hours of return skills demonstration laboratory. A classroom or laboratory hour must include 50 minutes of actual classroom or laboratory time.

(A) Class time must not exceed:

(i) four hours in a 24-hour period for a facility training program; or

(ii) eight hours in a 24-hour period for a correctional facility training program.

(B) The completion date of the program must be:

(i) a minimum of 60 days and a maximum of 180 days after the starting date of the facility training program; or

(ii) a minimum of 30 days and a maximum of 180 days after the starting date of a correctional facility training program.

(3) Each program must follow the curricula established by HHSC.

(4) Before a student begins a training program, the program must:

(A) ensure the student meets training requirements in §557.107(b)(1) - (9) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity);

(B) perform a criminal history check with the Texas Department of Public Safety to verify that the student does not have a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date the student begins the training program;

(C) check the EMR to verify that the student is not listed as unemployable;

(D) check the NAR to verify if the student is listed in revoked or suspended status; and

(E) document the findings of the criminal history check and employability check in its records.

(5) At least seven days before the beginning of a training program, the coordinator must notify HHSC in writing of the dates and daily hours of the program, and the projected number of students.

(6) A change in any information presented by the program in an approved application, including location, instructors, and content must be approved by HHSC before the change is implemented.

(7) The program instructors of the classroom hours must be a registered nurse and registered pharmacist.

(A) The nurse instructor must have:

(i) a minimum of two years of experience in caring for individuals in a long-term care setting or be an instructor in a school of nursing, for a facility training program; or

(ii) a minimum of two years of experience employed in a correctional setting or be an instructor in a school of nursing, for a correctional facility program.

(B) The pharmacist instructor must have:

(i) a minimum of one year of experience and be currently employed as a consultant pharmacist in a facility; or

(ii) a minimum of one year of experience employed as a pharmacist in a correctional setting.

(8) The program coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the director of nursing in the facility used for the clinical experience.

(A) The clinical experience must be counted only when the student is performing functions involving medication administration and under the direct supervision of a licensed nurse.

(B) The program coordinator must be responsible for final evaluation of the student's clinical experience.

(9) Each program must issue to each student, upon successful completion of the program, a certificate of completion, which must include the program's name, the student's name, the date of completion, and the signature of the program coordinator or administrative official.

(10) Each program must inform HHSC on the HHSC class roster form of the final grade results for each student within 15 days after the student's completion of the course.

(c) Continuing education training program.

(1) The program must consist of at least seven hours of classroom or online instruction.

(2) The instructors must meet the requirements in subsection (b)(7) of this section.

(3) Each program must follow the curricula established by HHSC or the curriculum established by TDCJ for corrections medication aides, as applicable.

(4) Within 10 days after a medication aide's completion of the course, each program must inform HHSC on the HHSC class roster form of the name of each medication aide who has completed the course.

(d) In developing a training program for corrections medication aides that complies with Texas Government Code §501.1485, TDCJ may modify, as appropriate, the content of the training program curriculum originally developed under Texas Health and Safety Code, Chapter 242, to produce content suitable for administering medication in a correctional facility. The training program curriculum must be approved by HHSC.

(e) Subsection (c) of this section applies to a training program for medication aides and correction medication aides.

§557.121. Permitting of Persons with Criminal Backgrounds.

(a) HHSC may suspend or revoke an existing permit, deny a permit, or deny a person the opportunity to take the examination for a permit if a person has been convicted of a felony or misdemeanor offense that the crime directly relates to the duties and responsibilities of a medication aide.

(b) When considering whether a criminal conviction directly relates to the duties and responsibilities of a medication aide, HHSC considers:

(1) the nature and seriousness of the offense;

(2) that the following offenses may reflect an actual or potential inability to perform as a medication aide:

(A) the misdemeanor of knowingly or intentionally acting as a medication aide without a permit issued under the Texas Health and Safety Code, Chapter 242;

(B) any conviction for an offense listed in §250.006 of the Texas Health and Safety Code;

(C) any conviction, other than a Class C Misdemeanor, for an offense defined under Texas Penal Code, Chapter 22, as assault; sexual assault; intentional exposure of another to AIDS or HIV; aggravated assault or sexual assault; injury to a child, elderly person, or person with disabilities; or aiding suicide;

(D) any conviction, except Class C Misdemeanors, with a final disposition within the last ten years, for an offense defined in the Texas Penal Code as burglary under Chapter 30; theft under §31.03; sale or display of harmful material to minors; sexual performance by a child; and possession or promotion of child pornography;

(E) any conviction for an offense defined in the Texas Penal Code as an attempt, solicitation, conspiracy, or organized criminal activity for any offense listed in subparagraphs (B) - (D) of this paragraph; and

(F) any conviction under United States statutes or jurisdiction other than Texas for any offense equivalent to those listed in subparagraphs (B) - (E) of this paragraph;

(3) the extent to which a permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a medication aide; and

(5) other factors related to the fitness of a person to perform the duties and discharge the responsibilities of a medication aide, as described in Texas Occupations Code §53.023.

(c) HHSC gives written notice to the person that HHSC proposes to deny the application or suspend or revoke the permit after a hearing, in accordance with the provisions of §557.123(c)(3) of this chapter (relating to Violations, Complaints, and Disciplinary Actions). If HHSC denies, suspends, or revokes an application or permit under this chapter, HHSC gives the person written notice:

(1) of the reasons for the decision;

(2) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to HHSC and HHSC final action; and

(3) that the person must begin the judicial review by filing a petition with the court within 30 days after HHSC action is final and appealable.

§557.123. Violations, Complaints, and Disciplinary Actions.

(a) Filing of complaints. Any person may complain to HHSC alleging that a person or program has violated the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter.

(1) Persons who want to file a complaint against a medication aide, training program, or another person, must notify HHSC by calling 1-800-458-9858 or by writing the Medication Aide Permit Program, Health and Human Services Commission, P.O. Box 149030, Mail Code E-416, Austin, Texas 78714-9030.

(2) Anonymous complaints may be investigated by HHSC if the complainant provides sufficient information.

(b) Investigation of complaints. If HHSC initial investigation determines:

(1) the complaint does not come within HHSC jurisdiction, HHSC advises the complainant and, if possible, refers the complainant to the appropriate governmental agency for handling the complaint;

(2) there are insufficient grounds to support the complaint, HHSC dismisses the complaint and gives written notice of the dismissal to the medication aide or person against whom the complaint has been filed and the complainant; or

(3) there are sufficient grounds to support the complaint, HHSC may propose to deny, suspend, emergency suspend, revoke, or not renew a permit or to rescind program approval.

(c) Disciplinary actions. HHSC may revoke, suspend, or refuse to renew a permit, or reprimand a medication aide for a violation of Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter. HHSC may suspend a permit in an emergency or rescind HHSC approval for an educational institution to offer a training program if the medication aide or educational institution fails to comply with the requirements in this chapter.

(1) HHSC may place on probation a person whose permit is suspended. HHSC may require the person on probation:

(A) to report regularly to HHSC on matters that are the basis of the probation;

(B) to limit practice to the areas prescribed by HHSC; or

(C) to continue or pursue professional education until the person attains a degree of skill satisfactory to HHSC in those areas that are the basis of the probation.

(2) Before institution of formal proceedings to revoke or suspend a permit or rescind program approval, HHSC gives written notice to the medication aide or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the medication aide or program must be given an opportunity, as described in the notice, to show compliance with all requirements of the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code §161.083; or this chapter. When there is a finding of an alleged act of abuse, neglect, or misappropriation of resident property by a medication aide employed at a Medicaid-certified nursing facility or a Medicare-certified skilled nursing facility, HHSC complies with the hearings process as provided in 42 Code of Federal Regulations §488.335.

(3) If denial, revocation, or suspension of a permit or rescission of program approval is proposed, HHSC gives written notice that the medication aide or program must request, in writing, a hearing within 30 days after receipt of the notice, or the right to a hearing is waived and the permit is denied, revoked, or suspended or the program approval is rescinded.

(4) A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act); and 40 TAC Chapter 91 (relating to Hearings under the Administrative Procedure Act).

(5) If an alleged act of abuse, neglect, or misappropriation by a medication aide who also is a certified nurse aide under the provisions of Chapter 556 of this title (relating to Nurse Aides) violates the rules in this chapter and Chapter 556, HHSC complies with the hearing process described in paragraph (4) of this subsection. Through the hearing, determinations will be made on both the permit for medication aide practice and the certification for nurse aide practice.

(d) Suspension, revocation, or nonrenewal. If HHSC suspends a permit, the suspension remains in effect until HHSC determines that the reason for suspension no longer exists or HHSC revokes or determines not to renew the permit. HHSC investigates before making a determination, and:

(1) during the time of suspension, the suspended medication aide must return his permit to HHSC;

(2) if a suspension overlaps a permit renewal date, the suspended medication aide may comply with the renewal procedures in §557.115 of this chapter (relating to Permit Renewal); however, HHSC does not renew the permit until HHSC determines that the reason for suspension no longer exists;

(3) if HHSC revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication. HHSC may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist; and

(4) if a permit is revoked or not renewed, a medication aide must immediately return the permit to HHSC.

(e) Complaints of abuse and neglect by medication aides who are issued a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, and employed in a correctional facility, are investigated as described in §557.125(k) of this chapter (relating to Requirements for Corrections Medication Aides).

§557.125. Requirements for Corrections Medication Aides.

(a) Purpose. The purpose of this section is to provide the qualifications, conduct, and practice activities of a medication aide employed in a correctional facility or employed by a medical services contractor for a correctional facility.

(b) Supervision and applicable law and rules. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the correctional facility using the medication aide. A medication aide must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a correctional facility; and

(2) comply with TDCJ rules applicable to personnel used in a correctional institution.

(c) Allowable and prohibited practices of a medication aide.

(1) A medication aide may:

(A) observe and report to the correctional facility's charge nurse reactions and side effects to medication shown by an inmate;

(B) take and record vital signs before the administration of medication which could affect or change the vital signs;

(C) administer regularly prescribed medication to an inmate if the medication aide:

(i) is trained to administer the medication;

(ii) personally prepares the medication or sets up the medication to be administered; and

(iii) documents the administration of the medication in the inmate's clinical record;

(D) administer oxygen per nasal cannula or a non-sealing mask only in an emergency, after which the medication aide must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;

(E) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;

(F) administer previously ordered PRN medication. A medication aide must document in the inmate's records, symptoms indicating the need for the medication, and the time the symptoms occurred;

(G) administer the initial dose of a medication;

(H) order an inmate's medications from the correctional institution's pharmacy;

(I) measure a prescribed amount of a liquid medication to be administered;

(J) break a tablet for administration to an inmate if:

(i) the licensed nurse on duty or on call has calculated the dosage; and

(ii) the inmate's medication card or its equivalent accurately documents how the tablet must be altered before administration; and

(K) crush medication if:

(i) authorization is obtained from the licensed nurse on duty or on call; and

(ii) the authorization is documented on the inmate's medication card or its equivalent.

(2) A medication aide may not:

(A) administer medication by the injection route including:

(i) intramuscular;

(ii) intravenous;

(iii) subcutaneous;

(iv) intradermal; and

(v) hypodermoclysis;

(B) administer medication used for intermittent positive pressure breathing treatments or any form of medication inhalation treatments;

(C) calculate an inmate's medication dose for administration;

(D) crush medication, except in accordance with paragraph (1)(K) of this subsection;

(E) administer medications or feedings by way of a tube inserted in a cavity of the body;

(F) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(G) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending licensed practitioner;

(H) steal, divert, or otherwise misuse medications;

(I) violate any provision of Texas Human Resources Code §161.083, or this chapter;

(J) fraudulently procure or attempt to procure a permit;

(K) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(L) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or excessive use of drugs, narcotics, chemicals, or any other type of material.

(d) Background and education requirements. Before applying for a corrections medication aide permit under Texas Human Resources Code §161.083, an applicant must be:

(1) able to read, write, speak, and understand English;

(2) at least 18 years of age;

(3) free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) a graduate of a high school or successfully passed a general educational development test; and

(5) employed in a correctional facility or by a medical service contractor for a correctional facility on the first day of an applicant's medication aide training program.

(e) Application. An applicant for a corrections medication aide permit under Texas Human Resources Code §161.083 must submit an official Corrections Medication Aide application form to HHSC.

(1) An applicant must submit the general statement enrollment form that contains:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in subsection (d) of this section were met before the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands material submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to HHSC; and

(F) the applicant's dated and notarized signature.

(2) An applicant must submit a certified copy or a photocopy that has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript, or the written results of a general educational development (GED) test.

(3) HHSC verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by paragraph (2) of this subsection. If HHSC is unable to verify the accreditation status of the school, testing service, or program, and HHSC requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to HHSC.

(4) HHSC considers a corrections medication aide permit application as officially submitted when HHSC receives the permit application.

(5) HHSC sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed by the day of the TDCJ final exam is void.

(6) HHSC sends notice of application approval or deficiency in accordance with §557.127 of this chapter (relating to Application Processing).

(f) Fees. An applicant must pay application and permit renewal fees for a corrections medication aide permit by cashier's check or money order made payable to the Health and Human Services Commission. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005. The fee schedule is as follows:

(1) permit application fee--$15;

(2) renewal fee--$15;

(3) late renewal fees for permit renewals made after the permit expires:

(A) $22.50 for an expired permit renewed from one to 90 days after expiration;

(B) $30 for an expired permit renewed from 91 days to one year after expiration; and

(4) permit replacement fee--$5.

(g) Examination procedures. TDCJ gives a written examination to each applicant at a site determined by TDCJ. An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(1) The applicant must meet the requirements of the TDCJ training program described in §557.119(d) of this chapter (relating to Training Program Requirements) before taking the written examination.

(2) The applicant must be tested on the subjects taught in the TDCJ training program curriculum and correctional facility clinical experience. The examination must test an applicant's knowledge of accurate and safe drug therapy administered to a correctional facility inmate.

(3) TDCJ administers the examination and determines the passing grade.

(4) TDCJ must inform HHSC, on the HHSC class roster form, of the final exam results for each applicant within 15 days after completion of the exam.

(5) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances must contact TDCJ to reschedule.

(6) If an applicant fails the examination, TDCJ notifies HHSC and the applicant in writing of the failure to pass the examination. The applicant may take one subsequent examination without having to re-enroll in the training program described in §557.119 of this chapter.

(7) An applicant whose application for a permit is denied under §557.113 of this chapter (relating to Determination of Eligibility) is ineligible to take the examination.

(h) Determination of eligibility. HHSC determines eligibility for a corrections medication aide permit applicant according to §557.113 of this chapter and subsections (d) - (g) of this section.

(i) Renewal. A permit must be renewed in accordance with §557.115 of this chapter (relating to Permit Renewal).

(j) Changes. Medication aides must report changes in accordance with §557.117 of this chapter (relating to Changes).

(k) Violations, complaints, and disciplinary actions.

(1) Complaints. Any person may complain to HHSC alleging that a person or program has violated Texas Human Resources Code §161.083, or this chapter. HHSC handles complaints in the manner set forth in §557.123 of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

(2) Investigations of abuse and neglect complaints. Allegations of abuse and neglect of inmates by corrections medication aides are investigated by the TDCJ Office of Inspector General. After an investigation, the TDCJ Office of Inspector General issues a report to HHSC with findings of abuse or neglect against the corrections medication aide. After reviewing the report and findings, HHSC determines whether to initiate a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit. If HHSC determines a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, §557.123(c) and (d) of this chapter apply. If HHSC determines that no formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, HHSC dismisses the complaint against the corrections medication aide and gives written notice of the dismissal to the corrections medication aide.

(l) Section 557.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) applies to corrections medication aides under this chapter.

§557.127. Application Processing.

(a) Time periods. HHSC complies with the following procedures in processing applications for a facility and corrections medication aide permit and renewal.

(1) The following periods of time apply from the date HHSC receives an application until the date HHSC issues a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. HHSC may issue a written notice stating that the application has been approved instead of a notice that the application is complete. The time periods are as follows:

(A) letter of acceptance of application for a permit--21 days;

(B) letter of application deficiency or ineligibility--21 days;

(C) acceptance of renewal permit--21 days; and

(D) letter of renewal of permit deficiency--21 days.

(2) The following periods of time apply from the date HHSC receives the last item necessary to complete the application until the date HHSC issues written notice approving or denying the application. For the purpose of this section, an application is not considered complete until any required examination has been successfully completed by the applicant. The time periods for denial include notification of a proposed decision and an opportunity, if required, for the applicant to show compliance with law, and an opportunity to request a hearing. The time periods are as follows:

(A) issuance of initial permit--60 days;

(B) letter of denial for a permit or renewal permit--60 days; and

(C) issuance of renewal permit after receipt of documentation of the completion of all renewal requirements--20 days.

(b) Reimbursement of fees.

(1) If an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement must be made to the program administrator for HHSC Medication Aide Permit Program. If the program administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request must be denied.

(2) Good cause for exceeding the time period exists if the number of applications for a permit and permit renewal exceeds by 15 percent or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by HHSC in the application process caused the delay; or any other condition exists giving HHSC good cause for exceeding the time period.

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the program administrator, the applicant may appeal in writing to the Texas Health and Human Services Commission's hearings section to request a hearing on the reimbursement denial. A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act); and 40 TAC Chapter 91 (relating to Hearings under the Administrative Procedure Act).

§557.128. Home Health Medication Aides.

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) holds a current license under state law that authorizes the licensee to administer medication;

(B) holds a current permit issued under this section and acts under the delegated authority of an RN to administer medication;

(C) administers a medication to a client in accordance with rules of the BON that permit delegation of the administration of medication to a person not holding a permit under this section; or

(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the BON and HHSC.

(2) A HCSSA that provides licensed and certified home health services, licensed home health services, hospice services, or personal assistance services may use a home health medication aide. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified HCSSA.

(3) Exemptions are as follows.

(A) A person may administer medication to a client without the license or permit as required in paragraph (1) of this subsection if the person is:

(i) a graduate nurse holding a temporary permit issued by the BON;

(ii) a student enrolled in an accredited school of nursing or program for the education of RNs who is administering medications as part of the student's clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the BON;

(iv) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(v) a trainee in a medication aide training program approved by HHSC under this chapter who is administering medications as part of the trainee's clinical experience.

(B) Supervision of an exempt person described in subparagraph (A) of this paragraph is as follows.

(i) A person described in:

(I) subparagraph (A)(i) of this paragraph shall be supervised by an RN;

(II) subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student's instructor; or

(III) subparagraph (A)(iii) of this paragraph shall be supervised by an RN or licensed vocational nurse.

(ii) Supervision must be on-site.

(C) An exempt person described in this subsection may not be used in a supervisory or charge position.

(b) Required actions.

(1) If a HCSSA provides home health medication aide services the HCSSA must employ a home health medication aide to provide the home health medication aide services. The HCSSA must employ or contract with an RN to perform the initial health assessment, prepare the client care plan, establish the medication list, medication administration record, and medication aide assignment sheet, and supervise the home health medication aide. The RN must be available to supervise the home health medication aide when home health medication aide services are provided.

(2) The clinical records of a client using a home health medication aide must include a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(3) The RN must be knowledgeable of HHSC rules governing home health medication aides and must ensure that the home health medication aide is in compliance with the Texas Health and Safety Code, Chapter 142, Subchapter B.

(4) A home health medication aide must:

(A) function under the supervision of an RN;

(B) comply with applicable law and this chapter relating to administration of medication and operation of the HCSSA;

(C) comply with HHSC rules applicable to personnel used in a HCSSA; and

(D) comply with this section and 40 TAC §97.701 (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) The RN must make a supervisory visit while the medication aide is in the client's residence in accordance with 40 TAC §97.298 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation).

(c) Permitted actions. A home health medication aide is permitted to:

(1) observe and report to the HCSSA RN and document in the clinical record any reactions and side effects to medication shown by a client;

(2) take and record vital signs of a client before administering medication that could affect or change the vital signs;

(3) administer regularly prescribed medication to a client if the medication aide:

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered; and

(C) documents the administration of the medication in the client's clinical record;

(4) administer oxygen per nasal cannula or a non-sealing face mask only in an emergency, after which the medication aide must verbally notify the supervising RN and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section;

(6) administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

(7) administer previously ordered PRN medication if:

(A) the HCSSA's RN authorizes the medication;

(B) the medication aide documents in the client's clinical notes the symptoms indicating the need for medication and the time the symptoms occurred;

(C) the medication aide documents in the client's clinical notes that the HCSSA's RN was contacted, symptoms were described, and the HCSSA's RN granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication each time the symptoms occur; and

(E) the medication aide ensures that the client's clinical record is co-signed by the RN who gave permission within seven days after the notes are incorporated into the clinical record;

(8) measure a prescribed amount of a liquid medication to be administered;

(9) break a tablet for administration to a client if:

(A) the client's medication administration record accurately documents how the tablet must be altered before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(10) crush medication, if:

(A) authorization has been given in the original physician's order or the medication aide obtains authorization from the HCSSA's RN; and

(B) the medication aide documents the authorization on the client's medication administration record.

(d) Prohibited actions. A home health medication aide must not:

(1) administer a medication by any injectable route, including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing treatment or any form of medication inhalation treatments;

(3) administer previously ordered PRN medication except in accordance with subsection (c)(7) of this section;

(4) administer medication that, according to the client's clinical records, has not been previously administered to the client;

(5) calculate a client's medication doses for administration;

(6) crush medication, except in accordance with subsection (c)(10) of this section;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified in 40 TAC §97.404(h) (relating to Standards Specific to Agencies Licensed to Provide Personal Assistance Services);

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, podiatrist or advanced practice nurse;

(9) order a client's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

(12) steal, divert, or otherwise misuse medications;

(13) violate any provision of the statute or of this chapter;

(14) fraudulently procure or attempt to procure a permit;

(15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, inappropriate use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under Texas Health and Safety Code, Chapter 142, Subchapter B must complete a training program. Before enrolling in a training program and applying for a permit under this section, all applicants:

(1) must be able to read, write, speak, and understand English;

(2) must be at least 18 years of age;

(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) must be a graduate of an accredited high school or have proof of successfully passing a general educational development test;

(5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under 40 TAC §97.701;

(6) must not have been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives a permit application;

(7) must not be listed as unemployable on the EMR; and

(8) must not be listed with a revoked or suspended status on the NAR.

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) The applicant must submit an HHSC application form to HHSC. The applicant must meet the requirements of subsection (e)(1) - (6) of this section.

(2) The application must be accompanied by the combined permit application and examination fee.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and HHSC open book examination.

(5) The applicant must complete the open book examination and return it to HHSC by the date given in the examination notice.

(6) The applicant must complete HHSC written examination. HHSC determines the site of the examination. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.

(9) HHSC notifies the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;

(2) successfully completed courses at the nursing school that cover HHSC curriculum for a home health medication aide training program;

(3) submits a statement with the person's application for a permit under this section, that is signed by the nursing school's administrator or other authorized individual who is responsible for determining that the courses that he or she certifies cover HHSC curriculum and certifies that the person completed the courses specified under paragraph (2) of this subsection; and

(4) complies with subsection (f)(1), (2), and (4) - (9) of this section.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement as follows:

(1) The applicant must submit an HHSC application form to HHSC. The applicant must meet the requirements of subsection (e)(1) - (4) of this section.

(2) The application must be accompanied by the combined permit application and exam fee.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority, including the law, act, code, or section, for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) HHSC acknowledges receipt of the application by sending the applicant a copy of this chapter and of HHSC open book examination.

(5) HHSC may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete HHSC open book examination and return it to HHSC by the date given in the examination notice.

(7) The applicant must complete HHSC written examination. The site of the examination is determined by HHSC. HHSC denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open book or written examination may not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, HHSC evaluates all application documents submitted by the applicant.

(10) HHSC notifies the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to HHSC, no later than 30 days after enrollment in a training program, an application, including all required information and documentation on HHSC forms.

(1) HHSC considers an application as officially submitted when HHSC receives the nonrefundable combined permit application and examination fee payable to the Health and Human Services Commission. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form must contain the following application material that is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met before the start of the program;

(C) a statement that the applicant understands that the application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to HHSC; and

(F) the applicant's signature that has been dated and notarized.

(3) The applicant must submit a certified copy or notarized photocopy of an unaltered original of the applicant's high school graduation diploma or transcript, or an equivalent document demonstrating that the applicant successfully passed a general educational development (GED) test, unless the applicant is applying under subsection (f) of this section.

(4) HHSC verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by paragraph (3) of this subsection. If HHSC is unable to verify the accreditation status of the school, testing service, or program, and HHSC requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to HHSC.

(5) HHSC sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed within 30 days after the date of the notice will be void.

(6) HHSC sends notice of application acceptance, disapproval, or deficiency in accordance with subsection (q) of this section.

(j) Examination. HHSC gives a written examination to each applicant at a site HHSC determines.

(1) No final examination may be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(3) The applicant must be tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy to clients.

(4) A training program must notify HHSC at least four weeks before its requested examination date.

(5) HHSC determines the passing grade on the examination.

(6) HHSC notifies in writing an applicant who fails the examination.

(A) HHSC may give an applicant under subsection (e) of this section one subsequent examination, without additional payment of a fee, upon the applicant's written request to HHSC.

(B) A subsequent examination must be completed by the date given on the failure notification. HHSC determines the site of the examination.

(C) Another examination will not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(7) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to HHSC. The examination must be completed within 45 days from the date of the originally scheduled examination. HHSC determines the site for the rescheduled examination.

(8) An applicant whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.

(k) Determination of eligibility. HHSC approves or disapproves all applications. HHSC sends notices of application approval, disapproval, or deficiency in accordance with subsection (q) of this section.

(1) HHSC denies an application for a permit if the person has:

(A) not met the requirements of subsections (e) - (i) of this section, if applicable;

(B) failed to pass the examination prescribed by HHSC as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by HHSC;

(D) violated or conspired to violate the Texas Health and Safety Code, Chapter 142, Subchapter B, or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medication aide as set out in subsection (r) of this section.

(2) If, after review, HHSC determines that the application should not be approved, HHSC gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(l) Medication aide. Home health medication aides must comply with the following permit renewal requirements.

(1) When issued, a permit is valid for one year.

(2) A medication aide must renew the permit annually.

(3) The renewal date of a permit is the last day of the current permit.

(4) Each medication aide is responsible for renewing the permit before the expiration date. Failure to receive notification from HHSC before the expiration date of the permit does not excuse the medication aide's failure to file for timely renewal.

(5) A medication aide must complete a seven hour continuing education program approved by HHSC before expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide must earn approved continuing education hours to have the permit renewed again.

(6) HHSC denies renewal of the permit of a medication aide who is in violation of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter at the time of application for renewal.

(7) HHSC denies renewal of the permit of a medication aide who has been convicted of a criminal offense listed in Texas Health and Safety Code §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date HHSC receives the renewal application.

(8) HHSC denies renewal of the permit of a medication aide who is listed as unemployable on the EMR.

(9) Home health medication aide permit renewal procedures are as follows.

(A) At least 30 days before the expiration date of a permit, HHSC sends to the medication aide at the address in HHSC records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the medication aide must complete and return with the required renewal fee.

(B) The renewal form must include the preferred mailing address of the medication aide and information on certain misdemeanor and felony convictions. It must be signed by the medication aide.

(C) HHSC issues a renewal permit to a medication aide who has met all requirements for renewal.

(D) HHSC does not renew a permit if the medication aide does not complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this section.

(E) HHSC does not renew a permit if renewal is prohibited by the Texas Education Code §57.491, concerning defaults on guaranteed student loans.

(F) If a medication aide fails to timely renew his or her permit because the medication aide is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the medication aide may renew the permit pursuant to this subparagraph.

(i) Renewal of the permit may be requested by the medication aide, the medication aide's spouse, or an individual having power of attorney from the medication aide. The renewal form must include a current address and telephone number for the individual requesting the renewal.

(ii) Renewal may be requested before or after the expiration of the permit.

(iii) A copy of the official orders or other official military documentation showing that the medication aide is or was on active military duty serving outside the State of Texas must be filed with HHSC along with the renewal form.

(iv) A copy of the power of attorney from the medication aide must be filed with HHSC along with the renewal form if the individual having the power of attorney executes any of the documents required in this subparagraph.

(v) A medication aide renewing under this subparagraph must pay the applicable renewal fee.

(vi) A medication aide is not authorized to act as a home health medication aide after the expiration of the permit unless and until the medication aide actually renews the permit.

(vii) A medication aide renewing under this subparagraph is not required to submit any continuing education hours.

(10) A person whose permit has expired for not more than two years may renew the permit by submitting to HHSC:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, before expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.

(11) A permit that is not renewed during the two years after expiration may not be renewed.

(12) HHSC issues notices of permit renewal approval, disapproval, or deficiency must be in accordance with subsection (q) of this section.

(m) Changes.

(1) A medication aide must notify HHSC within 30 days after changing his or her address or name.

(2) HHSC replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is:

(A) combined permit application and examination fee--$25;

(B) renewal fee--$15; and

(C) permit replacement fee--$5.00.

(2) All fees are nonrefundable.

(3) An applicant or home health medication aide must pay the required fee by cashier's check or money order made payable to the Health and Human Services Commission. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on an HHSC form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on HHSC forms and supporting documentation must be originals.

(B) The application includes:

(i) the anticipated dates of the program;

(ii) the location(s) of the classroom course(s);

(iii) the name of the coordinator of the program;

(iv) a list that includes the address and telephone number of each instructor and any other person responsible for the conduct of the program; and

(v) an outline of the program content and curriculum if the curriculum covers more than HHSC established curricula.

(C) HHSC may conduct an inspection of the classroom site.

(D) HHSC sends notice of approval or proposed disapproval of the application to the program within 30 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Texas Health and Safety Code, Chapter 142, Subchapter B, or of this chapter, the reasons for disapproval are given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within ten days of receipt of the notice of the proposed disapproval. The hearing must be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program includes, but is not limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the client's clinical records, including PRN medications;

(E) minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of a medication aide in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health clients;

(K) instruction on universal precautions; and

(L) the provisions of this chapter.

(3) The program consists of 140 hours in the following order: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of an RN in an agency, and ten more hours in the return skills demonstration laboratory. A classroom or laboratory hour is 50 minutes of actual classroom or laboratory time.

(A) Class time will not exceed four hours in a 24-hour period.

(B) The completion date of the program must be a minimum of 60 days and a maximum of 180 days from the starting date of the program.

(C) Each program must follow the curricula established by HHSC.

(4) At least seven days before the commencement of each program, the coordinator must notify HHSC in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by HHSC before the program's effective date of the change.

(6) The program instructors of the classroom hours must be an RN and registered pharmacist.

(A) The nurse instructor must have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years

as an RN with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor must have a minimum of one year of experience and be currently employed as a practicing pharmacist.

(7) The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the supervising nurse of the agency used for the clinical experience.

(A) The clinical experience must be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of an RN.

(B) The coordinator is responsible for final evaluation of the student's clinical experience.

(8) Upon successful completion of the program, each program issues to each student a certificate of completion, including the program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Within 15 days after completion of the course, each program must inform HHSC on the HHSC class roster form of the satisfactory completion for each student.

(p) Continuing education. The continuing education training program is as follows.

(1) The program must consist of at least seven clock hours of classroom instruction.

(2) The instructor must meet the requirements in subsection (o)(6) of this section.

(3) Each program must follow the curricula established by HHSC.

(4) Within 15 days after completion of the course, each program must inform HHSC on the HHSC class roster form of the name of each medication aide who has completed the course.

(q) Processing procedures. HHSC complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) The following periods of time apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are:

(A) letter of acceptance of an application for a home health medication aide permit--14 days; and

(B) letter of application or renewal deficiency--14 days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit--90 days;

(B) the letter of denial for a permit--90 days; and

(C) the issuance of a renewal permit--20 days.

(3) In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement is made to the Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period exists if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15 percent or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by HHSC in the application process caused the delay; or any other condition exists giving HHSC good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the HHSC commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the HHSC commissioner that the applicant requests full reimbursement of all fees paid because the application was not processed within the applicable time period. The applicant must mail the reimbursement request to Health and Human Services Commission, John H. Winters Human Services Complex, 701 W. 51st St., P.O. Box 149030, Austin, Texas 78714-9030. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the HHSC commissioner. The HHSC commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, HHSC reimburses, in full, all fees paid in that particular application process.

(r) Denial, suspension, or revocation.

(1) HHSC may deny, suspend, emergency suspend, or revoke a permit or program approval if the medication aide or program fails to comply with any provision of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter.

(2) HHSC may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to HHSC or required to be maintained or complied by the medication aide or program pursuant to this chapter.

(3) HHSC may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, HHSC considers the elements set forth in Texas Occupations Code §55.022 and §55.023.

(4) If HHSC proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, HHSC notifies the medication aide or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offers the medi-

cation aide or home health medication aide program an opportunity for a hearing.

(A) The medication aide or home health medication aide program must request a hearing within 15 days after receipt of the notice. Receipt of notice is presumed to occur on the tenth day after the notice is mailed to the last address known to HHSC unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Health and Human Services Commission, Medication Aide Program, Mail Code E-416, P.O. Box 149030, Austin, Texas 78714-9030.

(C) If the medication aide or home health medication aide program does not request a hearing, in writing, 15 days after receipt of the notice, the medication aide or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action is taken.

(5) HHSC may suspend a permit to be effective immediately when the health and safety of persons are threatened. HHSC notifies the medication aide of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the medication aide to request a hearing.

(6) All hearings are governed by Texas Government Code, Chapter 2001, and 1 TAC §§357.481 - 357.490.

(7) If the medication aide or program fails to appear or be represented at the scheduled hearing, the medication aide or program has waived the right to a hearing and the proposed action is taken.

(8) If HHSC suspends a home health medication aide permit, the suspension remains in effect until HHSC determines that the reason for suspension no longer exists, revokes the permit, or determines not to renew the permit. HHSC investigates before making a determination.

(A) During the time of suspension, the suspended medication aide must return the permit to HHSC.

(B) If a suspension overlaps a renewal date, the suspended medication aide may comply with the renewal procedures in this chapter; however, HHSC does not renew the permit until HHSC determines that the reason for suspension no longer exists.

(9) If HHSC revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(A) HHSC may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(B) When a permit is revoked or not renewed, a medication aide must immediately return the permit to HHSC.

§557.129. Alternate Licensing Requirements for Military Service.

(a) Fee waiver based on military experience.

(1) HHSC waives the combined permit application and examination fee described in §557.109(c)(1)(A) of this chapter (relating to Application Procedures) and §557.128(n)(1)(A) of this chapter (relating to Home Health Medication Aides) and the permit application fee described in §557.125(f)(1) of this chapter (relating to Requirements for Corrections Medication Aides) for an applicant if HHSC receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's application for a permit submitted to HHSC in accordance with this section. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to HHSC; and

(B) documentation of the type and dates of the service, training, and education the applicant received and an explanation as to why the applicant's military service, training or education substantially meets all of the requirements for a permit under this chapter.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of fees submitted in accordance with this subsection if HHSC determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(b) Fee waiver based on reciprocity.

(1) HHSC waives the combined permit application and examination fee described in §557.109(c)(1)(A) of this chapter and §557.128(n)(1)(A) of this chapter and the permit application fee described in §557.125(f)(1) of this chapter for an applicant if HHSC receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of the fee under this subsection, an applicant must include a written request for a waiver of the fee with the applicant's application that is submitted to HHSC in accordance with §557.128(h) of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the applicant must submit the requested documentation.

(5) HHSC approves a request for a waiver of the fee submitted in accordance with this subsection if HHSC determines that:

(A) the applicant holds a license, registration, certificate, or permit as a medication aide in good standing in another jurisdiction with licensing requirements substantially equivalent to or that exceed the requirements for a permit under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for permit renewal.

(1) HHSC gives a medication aide an additional two years to complete the permit renewal requirements described in §557.115 of this chapter (relating to Permit Renewal), if HHSC receives and approves a request for additional time to complete the permit renewal requirements from a medication aide in accordance with this subsection.

(2) To request additional time to complete permit renewal requirements, a medication aide must submit a written request for additional time to HHSC before the expiration date of the medication aide's permit. The medication aide must include with the request documentation of the medication aide's status as a military service member that is acceptable to HHSC. Documentation as a military service member that is acceptable to HHSC includes a copy of a current military service order issued to the medication aide by the armed forces of the United States, the State of Texas, or another state.

(3) If HHSC requests additional documentation, the medication aide must submit the requested documentation.

(4) HHSC approves a request for two additional years to complete permit renewal requirements submitted in accordance with this subsection if HHSC determines that the medication aide is a military service member, except HHSC does not approve a request if HHSC granted the medication aide a previous extension and the medication aide has not completed the permit renewal requirements during the two-year extension period.

(5) If a medication aide does not submit the written request described by paragraph (2) of this subsection before the expiration date of the medication aide's permit, HHSC will consider a request after the expiration date of the permit if the medication aide establishes to the satisfaction of HHSC that the request was not submitted before the expiration date of the medication aide's permit because the medication aide was serving as a military service member at the time the request was due.

(d) Renewal of expired permit.

(1) HHSC renews an expired permit if HHSC receives and approves a request for renewal from a former medication aide in accordance with this subsection.

(2) To request renewal of an expired permit, a former medication aide must submit a written request with a permit renewal application within five years after the former medication aide's permit expired. The former medication aide must include with the request documentation of the former medication aide's status as a military service member, military veteran, or military spouse that is acceptable to HHSC.

(3) Documentation of military status that is acceptable to HHSC includes:

(A) for status as a military service member, a copy of a current military service order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former medication aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former medication aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If HHSC requests additional documentation, the former medication aide must submit the requested documentation.

(5) HHSC approves a request for renewal of an expired permit submitted in accordance with this subsection if HHSC determines that:

(A) the former medication aide is a military service member, military veteran, or military spouse;

(B) the former medication aide has not committed an offense listed in Texas Health and Safety Code §250.006(a) and has not committed an offense listed in Texas Health and Safety Code §250.006(b) during the five years before the date the former medication aide submitted the initial permit application;

(C) the former medication aide is not listed on the EMR; and

(D) the former medication aide is not listed on the NAR.

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

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802639
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 487-3419

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CHAPTER 560. DENIAL OR REFUSAL OF LICENSE

26 TAC §§560.1- 560.4

The Texas Health and Human Services Commission (HHSC) proposes new Chapter 560, Denial or Refusal of License, comprised of §§560.1 - 560.4, in Title 26, Part 1.

BACKGROUND AND PURPOSE

The Texas Secretary of State created Title 26, Part 1 of the Texas Administrative Code to consolidate rules that govern functions of HHSC. These rules are currently in Titles 1, 25, and 40. As part of the consolidation into Title 26, HHSC proposes new rules in Chapter 560 to replace rules in Title 40, Chapter 99, Denial or Refusal of License. The rules in Chapter 99 are proposed for repeal elsewhere in this issue of the *Texas Register.* The proposed new rules are substantially the same as the rules that are proposed for repeal.

The proposed new rules change references to the Department of Aging and Disability Services (DADS) that were in Chapter 99 to

HHSC to reflect that DADS was abolished effective September 1, 2017, and its functions have transferred to HHSC.

SECTION-BY-SECTION SUMMARY

Proposed new §560.1, Definitions, replaces 40 TAC §99.1.

Proposed new §560.2, Convictions Barring Licensure, replaces 40 TAC §99.2. The new rule corrects a statutory reference by changing Section 5(c), Article 42.12, Code of Criminal Procedure, to Article 42A.111, Code of Criminal Procedure.

Proposed new §560.3, Adverse Licensing Record, replaces 40 TAC §99.3. The new rule replaces a reference to §99.1 with §560.1, to reflect the proposed new rule.

Proposed new §560.4, Registry Listings Barring Licensure, replaces 40 TAC §99.4.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

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

(5) the proposed rules will create a new rule;

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

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed new rules are substantially the same as the rules in Chapter 99 being proposed for repeal.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT

Cecile Erwin Young, Interim Executive Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be the consolidation of all HHSC rules in new Title 26, Part 1 of the Texas Administrative Code.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on New Chapter 560" in the subject line.

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code, §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code, Chapters 142, 242, 247, 248A, and 252, which authorize HHSC to license and regulate home and community support service agencies, nursing facilities, assisted living facilities, prescribed pediatric extended care centers, and intermediate care facilities for persons with an intellectual disability; and Texas Human Resources Code, Chapter 103, which authorizes HHSC to license and regulate day activity and health services facilities.

The new rules implement Texas Government Code, §531.0055; Texas Health and Safety Code, Chapters 142, 242, 247, 248A, and 252; and Texas Human Resources Code, Chapter 103.

§560.1. Definitions.

In this chapter:

(1) HHSC means the Texas Health and Human Services Commission; and

(2) facility means:

(A) a nursing facility licensed under Chapter 242 of the Texas Health and Safety Code;

(B) an assisted living facility licensed under Chapter 247 of the Texas Health and Safety Code;

(C) a home and community support services agency licensed under Chapter 142 of the Texas Health and Safety Code;

(D) a day activity and health services facility licensed under Chapter 103 of the Texas Human Resources Code;

(E) an intermediate care facility for individuals with an intellectual disability or related conditions licensed under Chapter 252 of the Texas Health and Safety Code; or

(F) a prescribed pediatric extended care center licensed under Chapter 248A of the Texas Health and Safety Code.

§560.2. Convictions Barring Licensure.

(a) HHSC may deny an initial facility license, or refuse to renew a facility license, if an applicant for a facility license, a facility license holder, or any other person whose criminal history must be verified before a facility license is issued:

(1) has been convicted, regardless of the date of conviction, of any of the following misdemeanor or felony offenses:

(A) an offense listed in Texas Health and Safety Code §250.006(a) or (c) (relating to Convictions Barring Employment);

(B) an offense relating to the practice of a health-related profession without a license;

(C) an offense relating to drugs, dangerous drugs, or controlled substances; or

(D) an offense under any of the following sections of the Texas Penal Code:

(i) Section 22.09, Tampering with consumer product;

(ii) Section 22.10, Leaving a child in a vehicle;

(iii) Section 32.42, Deceptive business practices;

(iv) Section 32.51, Fraudulent use or possession of identifying information;

(v) Section 35.02, Insurance fraud;

(vi) Section 42.072, Stalking;

(vii) Section 42.10, Dog fighting;

(viii) Section 43.05, Compelling prostitution;

(ix) Section 43.24, Sale, distribution, or display of harmful material to minor;

(x) Section 43.25, Sexual performance by a child;

(xi) Section 43.251, Employment harmful to children;

(xii) Section 43.26, Possession or promotion of child pornography;

(xiii) Section 46.06, Unlawful transfer of certain weapons;

(xiv) Section 46.13, Making a firearm accessible to a child;

(xv) Section 48.02, Prohibition of the purchase and sale of human organs;

(xvi) Section 49.07, Intoxication assault;

(xvii) Section 49.08, Intoxication manslaughter; or

(xviii) Section 71.022, Coercing, inducing, or soliciting membership in a criminal street gang; or

(2) has been convicted, during the five years preceding the date of the facility license application, of any of the following misdemeanor or felony offenses:

(A) an offense listed in Texas Health and Safety Code §250.006(b); or

(B) an offense under any of the following sections of the Texas Penal Code:

(i) Section 30.03, Burglary of coin-operated or coin collection machines;

(ii) Section 30.04, Burglary of vehicles;

(iii) Section 31.03, Theft;

(iv) Section 31.04, Theft of service;

(v) Section 32.21, Forgery;

(vi) Section 32.31, Credit card or debit card abuse;

(vii) Section 32.33, Hindering secured creditors;

(viii) Section 32.48, Simulating legal process;

(ix) Section 33.02, Breach of computer security;

(x) Section 42.061, Silent or abusive calls to 9-1-1 service;

(xi) Section 42.07, Harassment; or

(xii) Section 42.091, Attack on assistance animal.

(b) HHSC may revoke a facility license if HHSC becomes aware of:

(1) a conviction described in subsection (a)(1) of this section regardless of the date of the conviction; or

(2) a conviction described in subsection (a)(2) of this section if the conviction occurred during the five years preceding the date HHSC became aware of the conviction.

(c) HHSC considers a conviction of an offense under the laws of another state, federal law, or the Uniform Code of Military Justice containing elements that are substantially similar to the elements of an offense listed in subsection (a) of this section as if it is a conviction of one of the listed offenses.

(d) HHSC considers the following information when deciding if it will deny a facility license, refuse to renew a facility license, or revoke a facility license in accordance with this section:

(1) the nature and seriousness of the offense;

(2) the relationship of the offense to the operation of a facility;

(3) the extent to which a facility license might offer an opportunity for the person to engage in activity similar to the offense;

(4) the age of the person at the time of the offense;

(5) the amount of time since the offense; and

(6) any other information provided by the person to explain the circumstances of the offense or to evidence the person's conduct since the offense.

(e) For purposes of this section, a person who is placed on deferred adjudication community supervision for an offense listed in this section, successfully completes the period of deferred adjudication community supervision, and receives a dismissal and discharge in accordance with Article 42A.111, Code of Criminal Procedure, is not considered convicted of the offense for which the person received deferred adjudication community supervision.

§560.3. Adverse Licensing Record.

HHSC may deny an application for a license or refuse to renew a license for a facility described in §560.1(2)(A) - (E) of this chapter (relating to Definitions) if:

(1) any of the following persons are listed in a record maintained by a health and human services agency under Texas Government Code §531.952:

(A) the applicant or facility license holder;

(B) a person listed on an initial or renewal application; or

(C) a controlling person of the applicant or facility license holder; and

(2) the health and human services agency's action that resulted in the person being listed in a record maintained under Texas Government Code §531.952 is based on:

(A) an act or omission that resulted in physical or mental harm to an individual in the care of the person;

(B) a threat to the health, safety, or well-being of an individual in the care of the person;

(C) the physical, mental, or financial exploitation of an individual in the care of the person; or

(D) a determination by the health and human services agency that the person has committed an act or omission that renders the person unqualified or unfit to fulfill the obligations of the license, listing, or registration.

§560.4. Registry Listings Barring Licensure.

HHSC may deny an application for an initial facility license, or refuse to renew a facility license, if the applicant for the facility license, the facility license holder, or a controlling person of the applicant or facility license holder is listed:

(1) as unemployable on the Employee Misconduct Registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 253; or

(2) with a revoked or suspended status on the Nurse Aide Registry maintained by HHSC in accordance with Texas Health and Safety Code, Chapter 250.

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

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802640
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 487-3419

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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 Texas Department of Insurance (TDI) proposes to amend 28 TAC §9.1 to adopt 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 item numbers below identify the proposed amendments. Each item number represents amendments to a specific rule or form in the *Basic Manual.*The item numbers are for organizational purposes only and do not represent formal agenda items from a call for rulemaking.

EXPLANATION. TDI proposes to amend the *Basic Manual* in order to implement House Bill 2491, 84th Legislature, Regular Session (2015), Senate Bill 807, 84th Legislature, Regular Session (2015), and Senate Bill 1307, 84th Legislature, Regular Session (2015); streamline the Texas Title Insurance Act licensing and continuing education processes; and reduce the regulatory burden on license holders and title insurance businesses.

HB 2491 amended Texas Insurance Code Chapter 2652 to overhaul the escrow officer licensing process. Previously, a title insurance agent or direct operation employing an escrow officer obtained the escrow officer's license and ensured the escrow officer complied with applicable law. An escrow officer was required to obtain a license with each employer and could hold multiple licenses if the escrow officer was employed by multiple title insurance agents or direct operations. Now, escrow officers are responsible for applying for and maintaining their license, and their license is no longer tied to their employment with a particular title insurance agent or direct operation. Instead, escrow officers are appointed by their employing title insurance agent or direct operation. The proposed amendments to the *Basic Manual* implement this new licensing and appointment process.

SB 807 and SB 1307 amended Texas Occupations Code Chapter 55 relating to licensing requirement waivers, exemptions, extensions, and alternative procedures for military service members, military veterans, and military spouses. The proposed amendments to the *Basic Manual* implement SB 807 and SB 1307.

TDI is also proposing to amend the *Basic Manual* to streamline and modernize the licensing and continuing education processes, and to reduce the regulatory burden on license holders and title insurance businesses. Specifically, TDI is proposing to reduce the number of required notices to TDI; to reduce the amount of documentation required for license applications, appointments, and notices; and to no longer require new licenses and appointments for certain changes in the operations of title insurance agents.

Additionally, TDI is proposing to make nonsubstantive changes to conform with current TDI style guidelines.

TDI proposes amendments to the following items as described in the following discussion:

Item 2018-1: Amend Section VII - Administrative Rules ("Administrative Rules"), Definitions, to place the definitions in alphabetical order and to make nonsubstantive changes, including changing "shall mean" to "means."

In proposed Section A (current Section N), amend the definition of "assumed name" to only reference the statutory definition in

Texas Business and Commerce Code §71.002, to prevent any potential conflict between the statutory definition and the *Basic Manual.*

In proposed Section B (current Section E), amend the definition of "business of title insurance" to only reference the statutory definition in Texas Insurance Code §2501.005, to prevent any potential conflict between the statutory definition and the *Basic Manual.*

Redesignate Section H as Section C.

Amend Section D, defining "company," to remove the reference to Section IV - Procedural Rule (Procedural Rule) P-1. Only referencing the statutory definition will prevent any potential conflict between the statutory definition and the *Basic Manual.*

In proposed Section E (current Section I), amend the definition of "control" to include the language from Procedural Rule P-28, Section A, Subsection 2 within the definition, instead of only referencing it.

In proposed Section F (current Section M), amend the defined term to change it from "designated manager" to "designated on-site manager" to be more descriptive. Amend the definition to refer to the new Title Insurance Licensing Biographical Information (FINT08) form that TDI proposes to adopt, instead of referring to the current form TDI uses to obtain biographical information. Delete the portion of the definition that contains qualifying language for serving as the designated on-site manager, because this qualifying language is addressed in the proposed FINT08 form.

In proposed Section G (current Section B), amend the definition of "direct operation" to only reference the statutory definition in Insurance Code §2501.003, to prevent any potential conflict between the statutory definition and the *Basic Manual.*

In proposed Section H (current Section G), amend the definition of "entity" to more closely conform to the statutory requirements in Insurance Code §2651.002(c)(1)(C) and to define it based on the substance of the type of business formation instead of defining it based on whether the entity is registered with the Office of the Texas Secretary of State. Insurance Code §2651.002(c)(1)(C) does not reference an entity's registration with the Office of the Texas Secretary of State.

In proposed Section I (current Section L), amend the defined term to change it from "Federal Identification Number" to "Federal Tax Identification Number," and amend the definition to remove the portion of the definition that limits how the number may be used by an applicant. This limitation is addressed within the substantive portion of the Administrative Rules.

In proposed Section J (current Section F), amend the definition of "partnership" to more closely conform to the statutory requirements in Insurance Code §2651.002(c)(1)(B) and to define it based on the substance of the type of business formation instead of defining it based on whether the partnership is registered with the Office of the Texas Secretary of State. A partnership's registration with the Office of the Texas Secretary of State is not relevant in the statutory requirements in Insurance Code §2651.002(c)(1)(B).

Add new Section L to define "sole proprietorship" to include definitions for all organizational types addressed in Insurance Code §2651.002(c)(1).

In proposed Section M (current Subsection C), amend to add "TDI" as a defined term. "TDI" is used in the amended portions of the Administrative Rules, as proposed, to conform with current TDI style guidelines.

In proposed Section N (current Section A), amend the defined terms to change them from "agent" and "title agent" to "title insurance agent," to conform with the statutory term used in Insurance Code, Title 11. Amend the definition to reference only the statutory definition of "title insurance agent" in Insurance Code §2501.003, which will prevent any potential conflict between the statutory definition and the *Basic Manual.* The meaning of the terms "agent" and "title agent" where used in the Administrative Rules will be clear from the context.

Delete Section J, because, as proposed, the full term "title insurance agent license" is used within the amended portions of the Administrative Rules where the meaning of the term "license" would not be clear from the context. The meaning of the term "license" used in the portions of the Administrative Rules TDI does not propose to amend should be clear.

Item 2018-2. Amend Administrative Rule L-1 to make organizational changes, including making the citation of different sections easier. As proposed, Section I will address general title insurance agent requirements; Section II will address title insurance agent license application requirements and license issuance; Section III will address title insurance agent appointments; Section IV will address title insurance agent license expiration, renewal, the effect of a suspension, and surrender; and Section V will address requirements regarding changes in operation.

Delete the undesignated first paragraph, because its substantive content is addressed elsewhere within Administrative Rule L-1, as proposed.

In proposed Section I, Subsection A, Paragraph 1 (current undesignated second paragraph), amend to more closely conform to the requirements of Insurance Code §2651.001, including removing the language in number 3 in the second paragraph and adding proposed Subparagraph c. In addition to addressing the bond or deposit requirements in Insurance Code §2651.001(a)(2) in Subparagraph c, TDI proposes to address the escrow officer bond or deposit requirements in Insurance Code, Chapter 2652, Subchapter C, because a title insurance agent is responsible for the bond or deposit requirements of an appointed escrow officer. Currently, this is only addressed in Administrative Rule L-2.

Add new Section I, Subsection A, Paragraphs 2 and 3 to address the requirements for title insurance agents employing an escrow officer, which is currently only addressed in Administrative Rule L-2. Additionally, the paragraph addresses the new appointment requirements under HB 2491. These requirements conform to Insurance Code §2652.001. These provisions are added here because they are requirements of title insurance agents, not escrow officers.

Add new Section I, Subsection B to inform title insurance agents of their obligations regarding their records.

Add new Section I, Subsection C to address information TDI is proposing to delete from the undesignated first paragraph of Administrative Rule L-1, and to provide that forms may be submitted to TDI electronically.

Add new Section I, Subsection D to change the procedure for the Abstract Plant Information T-52 (FINT120) form. As proposed, title insurance agents must maintain a current and complete FINT120 form, but TDI would only require title insurance

agents to submit it on request in order to reduce the regulatory burden.

Add new Section I, Subsection E to specify that license holders who meet certain qualifications pertaining to their military service or the military service of their spouse may request a waiver, extension, exemption, or alternative licensing requirements for the license holder to comply with the certain licensing requirements as provided in 28 TAC §19.803.

Delete the undesignated third paragraph, because, as proposed, sponsoring title insurance companies will no longer be required to submit the FINT120 form, Agent Contract, or Agent Contract Submission (FINT141) form with the title insurance agent license application. As proposed, appointing title insurance companies will only need to attest that the title insurance agent has met the abstract plant requirements and that the title insurance agent has an agent contract with the title insurance company in the Title Insurance Agent or Direct Operation Appointment (FINT10) form in order to reduce the regulatory burden. The title insurance agent will only be responsible for maintaining a current and completed FINT120 form available for TDI inspection.

In proposed Section II (current Section I), amend to reorganize for clarity, including addressing all business organization types together within each application requirement, instead of restating each requirement in separate sections for each business organization type.

Add new Section II, Subsection A, Paragraph 1 to address existing requirements for a title insurance agent license and using the defined terms, as proposed.

Add new Section II, Subsection A, Paragraph 2 to address the existing limitation currently within the definition of "Federal Identification Number" and the undesignated first paragraph of Administrative Rule L-1. The proposal deletes the other references to this limitation.

In proposed Section II, Subsection B, Paragraph 1 (current Section I, Subsection A, Paragraph 1; Section I, Subsection B, Paragraph 1; and Section I, Subsection C, Paragraph 1), address existing fingerprint requirements under 28 TAC §§1.503-1.504. Section A of the currently used Application for Texas Title Insurance Agent License (FINT143) form, the biographical information portion, will be separated out into its own form, the new proposed FINT08 form. TDI proposes new Subparagraphs a-d to specify who must submit the new FINT08 form. Subparagraphs a-d do not add any new requirements, but use the defined terms, as proposed.

Delete Section I, Subsection A, Paragraph 2; Section I, Subsection B, Paragraph 2; and Section I, Subsection C, Paragraph 2, because the new proposed Application for Title Insurance Agent or Direct Operation License (FINT143) form will provide instructions on how it should be completed.

Redesignate Section I, Subsection A, Paragraph 3; Section I, Subsection B, Paragraph 3; and Section I, Subsection C, Paragraph 4, as Section II, Subsection B, Paragraph 2.

In proposed Section II, Subsection B, Paragraph 3 (current Section I, Subsection A, Paragraph 4; Section I, Subsection B, Paragraph 4; and Section I, Subsection C, Paragraph 6), address existing appointment requirements and incorporate a new proposed approach to licenses and appointments. As proposed, Section C of the currently used FINT143 form, the initial appointment portion, will be separated out into its own form, the FINT10 form. As proposed, the new FINT10 form will be used for all filings associated with title insurance companies authorizing or de-authorizing a title insurance agent to bind the insurer to issue a title insurance policy. Additionally, in order to reduce the regulatory burden, TDI is proposing that title insurance companies no longer be required to submit a FINT141 form, the title insurance agent contract, a FINT120 form, a Title Agent Update (FINT129) form, or a Schedule D form with each appointment. Instead, as proposed, appointing title insurance companies will only be required to attest that the title insurance agent has a current Schedule D, has an agent contract, and meets the requirements regarding abstract plants.

In proposed Section II, Subsection B, Paragraph 4 (current Section I, Subsection A, Paragraph 6; Section I, Subsection B, Paragraph 6; and Section I, Subsection C, Paragraphs 8-9), address existing title insurance agent and escrow officer bond or deposit requirements and add detail on how an applicant can demonstrate compliance.

Add new Section II, Subsection B, Paragraph 5 to require that an applicant demonstrate compliance with the capitalization requirements in Insurance Code §2652.012.

Redesignate Section I, Subsection A, Paragraph 5; Section I, Subsection B, Paragraph 5; and Section I, Subsection C, Paragraph 7, as Section II, Subsection B, Paragraph 6.

Add new Section II, Subsection B, Paragraph 7 to clarify existing requirements regarding appointment fees.

Delete Section I, Subsection B, Paragraph 7, and Section I, Subsection C, Paragraph 3, because the new proposed FINT143 form instructs partnerships and entities to submit this information.

Delete Section I, Subsection C, Paragraph 5, because franchise tax documentation will no longer be required, as proposed, in order to reduce the regulatory burden.

In proposed Section III, Subsection A, Paragraph 1 (current Section II), incorporate the new proposed approach to licenses and appointments. As proposed, a title insurance company is only required to submit the new FINT10 form and, in order to reduce the regulatory burden, will no longer be required to submit a FINT141 form, the title insurance agent contract, a FINT120 form, a FINT129 form, a Schedule D form, or a Notification of Appointment (FINT142) form with each appointment. Instead, as proposed, appointing title insurance companies will only be required to attest that the title insurance agent has a current Schedule D, has an agent contract, and meets the requirements regarding abstract plants.

Add new Section III, Subsection A, Paragraph 2 to address the date an appointment is effective under Insurance Code §2651.009(c-2).

Add new Section III, Subsection A, Paragraph 3 to specify that title insurance agents may act for multiple title insurance companies in a county, as allowed under Insurance Code §2651.009(a).

In proposed Section III, Subsection A, Paragraph 4 (current Section IV, Subsection A), amend the current language for clarity.

In proposed Section III, Subsection B, Paragraph 1 (current Section V, Subsection A, Paragraph 3), incorporate the new proposed approach to licenses and appointments. As proposed, a title insurance company will only be required to submit the new FINT10 form and, in order to reduce the regulatory burden, will no longer be required to submit the title insurance agent contract or amendments, a FINT141 form, a FINT120 form, or a FINT129

form with each change in county. Instead, as proposed, the title insurance company will only be required to attest that the title insurance agent has a current Schedule D, has an agent contract, and meets the requirements regarding abstract plants.

In proposed Section III, Subsection B, Paragraph 2 (current Section VI, Subsection E), specify that a title insurance agent may not operate in an additional county on behalf of a title insurance company until the earlier of the eighth business day following the date the complete FINT10 form is submitted, unless TDI notified the title insurance company that the appointment was rejected; or when TDI's website reflects the additional counties.

In proposed Section III, Subsection C (current Section III), amend the language to only address appointment terminations in the subsection and to use the term "termination" for the ending of an appointment, instead of "cancellation." "Termination" is the statutory term used. Section III, Subsection B, which currently addresses the surrender of a license, would be addressed in proposed Section IV, Subsection D.

Add new Section III, Subsection C, Paragraph 1 to specify the effect of terminating an appointment.

Add new Section III, Subsection C, Paragraph 2 to specify that an appointment with a title insurance company is terminated when a title insurance agent is no longer authorized to operate in any counties.

In proposed Section III, Subsection C, Paragraph 3 (current Section III, Subsection D), amend the language for clarity and to specify that if the title insurance agent is seeking a new appointment, the new appointment must be actively pursued within the existing license period in line with existing provisions regarding license suspensions.

In proposed Section III, Subsection C, Paragraph 4, Subparagraph a (current Section III, Subsection A), amend the language to no longer require the title insurance company state the reason for the termination, unless it is for cause, and to specify that the FINT10 form must be used to give TDI notice of appointment terminations.

In proposed Section III, Subsection C, Paragraph 4, Subparagraph b (current Section III, Subsection C), amend the language to align the notification requirement to that of the title insurance company under Section III, Subsection C, Paragraph 4, Subparagraph a, as proposed, and to no longer require a title insurance agent state the reason that the title insurance agent is terminating the appointment in order to reduce the regulatory burden.

In proposed Section III, Subsection D, Paragraph 1 (current Section IV, Subsection B), amend the language to reference Insurance Code §2651.010.

In proposed Section III, Subsection D, Paragraph 2 (current Section IV, Subsection B, Paragraph 2), amend the language for clarity and to reference the new proposed appointment provision.

Add new Section III, Subsection D, Paragraph 3 to specify that the requirements of Administrative Rule D-1 still apply to a suspended license.

Amend Section IV, Subsection A by deleting the second sentence, because the issue is more directly addressed in the proposed Section III, Subsection A, Paragraph 4.

Delete Section IV, Subsection C, because, although TDI will continue sending notices of renewal, TDI does not believe it is necessary to have this provision within the *Basic Manual*.

In proposed Section IV, Subsection B, Paragraph 1 (current Section IV, Subsection D), amend the language to reference the new proposed Title Insurance Agent or Direct Operation Renewal Application (FINT03) form and to no longer require title insurance agents to submit franchise tax documentation in order to reduce the regulatory burden.

Redesignate Section IV, Subsection E as Section IV, Subsection B, Paragraph 2.

In proposed Section IV, Subsection B, Paragraph 3 (current Section IV, Subsection F), clarify existing requirements regarding licenses renewed after expiration.

In proposed Section IV, Subsection B, Paragraph 4 (current Section IV, Subsection G), specify the effect of a license being ineligible for renewal. This does not modify existing requirements.

Redesignate Section IV, Subsection B, Paragraph 1 as Section IV, Subsection C, Paragraph 1.

In proposed Section IV, Subsection C, Paragraphs 2-3 (current Section IV, Subsection I), specify that a license that is suspended on its expiration is not eligible for renewal and that a valid appointment must be received by TDI prior to the expiration of the suspended license for it to be eligible for renewal.

Redesignate Section III, Subsection B as Section IV, Subsection D.

Amend Section V to reorganize for clarity and to incorporate a proposed new approach to changes in operation. Currently, certain ownership changes in a title insurance agent partnership or entity require the cancellation of all existing title insurance agent and escrow officer licenses and appointments and for new licenses and appointments to be acquired. In order to reduce the regulatory burden, TDI is proposing to allow title insurance agents and escrow officers to keep their existing licenses and appointments when these certain changes in ownership occur. As proposed, TDI will only require a notice of the changes.

In proposed Section V, Subsection A, Paragraph 1 (current Section V, Subsection B), specify that a new license is only required if it expires, is surrendered, or is revoked under the proposed new approach to changes in operation and that the business of title insurance may not be conducted until a new license is acquired.

Add new Section V, Subsection A, Paragraph 2 to clarify that a title insurance agent license is non-transferable.

In proposed Section V, Subsection B (current Section V, Subsection A), amend the language to reorganize for clarity and to incorporate the proposed new approach to changes in operation. TDI proposes to broadly organize Subsection B based on the type of form or other documentation required instead of listing required documentation under each of the addressed changes in operation. Additionally, TDI is proposing to address different categories of changes in operation more broadly to provide more clarity, instead of addressing more specific circumstance as it is currently. Last, the proposed new approach replaces the various forms currently required for different changes in operations with only the FINT129 and FINT08 forms in order to reduce the regulatory burden.

Add new Section V, Subsection B, Paragraph 1, Subparagraph a to address existing notification requirements for all mergers, exchanges, and conversions. This proposed provision reduces the documentation required with the notification in order to reduce the regulatory burden and would not add to any existing requirements.

Add new Section V, Subsection B, Paragraph 1, Subparagraph b to address existing notification requirements for a merger of two or more title insurance agents in which one existing title insurance agent survives the merger. This proposed provision reduces the documentation required with the notification in order to reduce the regulatory burden and would not add to any existing requirements. Additionally, as proposed, Clause iii will specify that TDI will combine all existing title insurance company appointments and escrow officer appointments of the merged title insurance agents into the surviving title insurance agent.

In proposed Section V, Subsection B, Paragraph 1, Subparagraph c (current Section V, Subsection A, Paragraphs 4-5), combine the two separate existing provisions for title insurance agent's name and assumed name changes to reduce the documentation required with the notification in order to reduce the regulatory burden. This provision, as proposed, would not add to any existing requirements.

In proposed Section V, Subsection B, Paragraph 1, Subparagraph c, Clause iii (current Section VI, Subsection C), broaden the requirement to cover any name change.

Add new Section V, Subsection B, Paragraph 1, Subparagraph d to address existing notification requirements for a change in the ownership percentages of the title insurance agent. This proposed provision reduces the documentation required with the notification in order to reduce the regulatory burden and would not add to any existing requirements.

In proposed Section V, Subsection B, Paragraph 1, Subparagraph e (current Section V, Subsection A, Paragraph 2), specify that the notification is required for a change in the physical or mailing address. As proposed, a notice for a change in branch office address will no longer be required to reduce the regulatory burden.

Add new Section V, Subsection B, Paragraph 2 to address when the FINT08 form is required for a change in operations. These proposed provisions would not add to any existing requirements.

In proposed Section V, Subsection B, Paragraph 3 (current Section V, Subsection A, Paragraph 9), amend the language to no longer require notification for changes in the title insurance agent's title plant in order to reduce the regulatory burden. In line with the proposed new approach to title plant documentation, TDI would only require the title insurance agent to update the title insurance agent's records with the changes and to make those records available on request.

In proposed Section V, Subparagraph B, Paragraph 4 (current Section IV, Subsection H), amend the language to no longer require notification for changes in the bonds or deposits in order to reduce the regulatory burden. TDI would only require the title insurance agent to update the title insurance agent's records with the changes and to make those records available on request.

Delete Section VI, Subsections A, B, and D, because these provisions would no longer be necessary with the proposed new approach to changes in operation.

Delete Section VII, because it was meant to only apply temporarily and is no longer necessary.

Item 2018-3. Adopt the Application for Title Insurance Agent or Direct Operation License (FINT143) form for a title insurance agent or direct operation license applicant to use to apply for a license under Administrative Rule L-1, Section II, and Administrative Rule L-3, Section II, as proposed. Information within brackets is subject to change.

Item 2018-4. Adopt the Title Insurance Licensing Biographical Information (FINT08) form for a title insurance agent or direct operation license applicant and other associated individuals to use to provide personal background information to TDI as required under Administrative Rule L-1, Section II, Subsection B, Paragraph 1, and Administrative Rule L-3, Section II, Subsection B, Paragraph 1, as proposed. Information within brackets is subject to change.

Item 2018-5. Adopt the Title Insurance Agent or Direct Operation Appointment (FINT10) form for a title insurance company to use when authorizing or de-authorizing a title insurance agent or direct operation to bind the insurer to issue a title insurance policy. Information within brackets is subject to change.

Item 2018-6. Adopt the Title Insurance Agent or Direct Operation Renewal Application (FINT03) form for a title insurance agent or direct operation to renew their license under Administrative Rule L-1, Section IV, Subsection B, and Administrative Rule L-3, Section IV, Subsection B, as proposed. Information within brackets is subject to change.

Item 2018-7. Adopt the Title Insurance Agent or Direct Operation Change Request (FINT129) form for a title insurance agent or direct operation to provide information as specified in Administrative Rule L-1, Section V, Subsection B, Paragraph 1, and Administrative Rule L-3, Section V, Subsection B, Paragraph 1, as proposed. Information within brackets is subject to change.

Item 2018-8. Amend the Texas Title Insurance Agent/Direct Operation Bond to update the reference to Insurance Code Article 9.38 to the codified provision of Insurance Code §2651.101 and to make non-substantive changes.

Item 2018-9. Amend the Texas Escrow Officers Schedule Bond to update the reference to Article 9.45 to the codified provision, Insurance Code §2652.101 and to make non-substantive changes.

Item 2018-10. Amend Administrative Rule L-2 to implement HB 2491 and to replace the existing staggered license renewal system with one consistent with the renewal system established under Senate Bill 876, 84th Legislature, Regular Session (2015). Additionally, revise the language to make organizational changes. As proposed, Section I will address general requirements; Section II will still address the application for and issuance of an escrow officer license; Section III will still address escrow officer appointments; Section IV will address the expiration, renewal, and surrender of an escrow officer license; and Section V will address changes of name, address, or contact information.

Amend Section I, Subsection A to conform to Insurance Code §2501.003.

Amend Section I, Subsection B to implement HB 2491 by adding that a title insurance agent or direct operation may not employ *or appoint* an unlicensed escrow officer and to note that a deposit

may be made instead of acquiring a bond under Insurance Code §2651.102 and §2652.102.

Amend Section I, Subsection C to implement HB 2491 by indicating that escrow officers must be appointed by a title insurance agent or direct operation prior to performing the duties of an escrow officer.

Amend Section I, Subsection D to implement HB 2491 by indicating that escrow officers must be appointed prior to performing the duties of an escrow officer.

Amend Section I, Subsection E to implement HB 2491 by indicating that escrow officers must be appointed prior to performing the duties of an escrow officer and to use the new proposed defined terms.

In proposed Section I, Subsection F (current undesignated first sentence), specify that the required forms are available on the TDI website and that they may be submitted electronically if such submission is available.

Add new Section I, Subsection G to specify that license holders who meet certain qualifications pertaining to their military service, or that of their spouse, may request a waiver, extension, exemption, or alternative licensing requirements for the license holder to comply with certain licensing requirements as provided in 28 TAC §19.803.

In proposed Section II, Subsection A (current Section II, first undesignated provision), implement HB 2491 by indicating that the responsibility of obtaining and maintaining the escrow officer license is now with the escrow officer.

In proposed Section II, Subsection A, Paragraph 1 (current Section II, Subsection A), reference the new proposed Application for Escrow Officer License (FINT132) form.

Add new Section II, Subsection A, Paragraph 2 to specify that the new proposed Escrow Officer Appointment (FINT09) form must be submitted in order to obtain an escrow license.

In proposed Section II, Subsection A, Paragraph 3 (current Section II, Subsection B), specify that the fee may be paid by either the escrow officer license applicant or the appointing title insurance agent or direct operation.

In proposed Section II, Subsection B (current Section II, Subsection C), specify that the appointing title insurance agent or direct operation is responsible for updating and maintaining the appointed escrow officer's bond or deposit under Insurance Code, Chapter 2652, Subchapter C, and reference provisions in Administrative Rules L-1 and L-3, as proposed, that address escrow officer bond or deposit requirements. Delete Paragraph 1, because escrow officers are not responsible for their bond or deposit requirements and this information is addressed in Administrative Rules L-1 and L-3, as proposed. Delete Paragraph 2, because the required bond form is adopted by reference.

Add new Section II, Subsection C to specify that TDI will not prorate the initial license application fee for a license period shorter than 24 months.

Add new Section II, Subsection D to specify that an escrow officer appointment fee is not required for the first appointment made with a license application.

In proposed Section III, Subsection A (current Section III), address escrow officers holding multiple appointments to implement HB 2491, instead of addressing title insurance agents using multiple escrow officers.

Add new Section III, Subsection A, Paragraph 1 to implement HB 2491 by specifying that an escrow officer is not required to obtain an additional license to be employed or appointed by additional title insurance agents or direct operations.

In proposed Section III, Subsection A, Paragraph 2 (current Section III, Subsection C), amend to specify that each title insurance agent or direct operation must separately appoint the escrow officer and to not require the submission of documentation regarding the changes in the escrow officer's schedule bond with new appointments.

In proposed Section III, Subsection A, Paragraph 3 (current Section III, Subsections A-B), implement HB 2491 by referencing the new proposed FINT09 form and specifying the amount of the appointment fee required under Insurance Code §2652.1511(c)(1).

Add new Section III, Subsection A, Paragraph 4 to implement HB 2491 by specifying when an escrow officer appointment is effective under Insurance Code §2652.1511(e).

Add new Section III, Subsection B, Paragraph 1 to implement HB 2491 by specifying when an appointment expires under Insurance Code §2652.1511(d).

In proposed Section III, Subsection B, Paragraph 2 (current Section IV, Subsection A, Paragraph 1), amend the language to implement HB 2491 by addressing the cancellation of an escrow officer's appointment instead of the escrow officer's license and to no longer require the submission of the updated bond to reduce the regulatory burden.

In proposed Section III, Subsection B, Paragraph 3 (current Section IV, Subsection C), amend to implement HB 2491 by addressing the cancellation of an escrow officer's appointment instead of the escrow officer's license and deleting the reference to the submission of the updated bond to reduce the regulatory burden.

In proposed Section III, Subsection B, Paragraph 4 (current Section IV, Subsection A, Paragraph 2), amend the language to no longer require the submission of documentation regarding changes to the escrow officer's schedule bond as a result of the escrow officer ceasing to act as an escrow officer for a title insurance agent or direct operation in order to reduce the regulatory burden.

In proposed Section IV, Subsection A, Paragraph 1 (current Section V, Subsection A), replace the existing staggered license renewal system with one consistent with the renewal system created under SB 876. Set escrow officer license expiration dates as specified in Insurance Code §4003.001, except that the expiration date will be extended to the last day of the escrow officer license holder's birth month. This method gives effect to the intent of SB 876, which generally set license expirations on a license holder's birthday; however, it does not raise the same privacy concerns. Additionally, revise to provide that any license fee will not be increased based on an extended initial license period and that an escrow officer is not required to obtain additional continuing education credit hours during an extended license period.

Add new Section IV, Subsection A, Paragraph 2 to give effect to the intent of SB 876 by providing for the expiration date alignment of a new escrow officer license to that of any other existing license. Additionally, revise to provide that the application fee will not be decreased or increased based on the length of the initial license period and that an escrow officer is not required to obtain additional continuing education credit hours during an extended license period.

Add new Section IV, Subsection A, Paragraph 3, Subparagraph a to set the first expiration date under the new system for all escrow officer licenses held by an individual on the last day of the individual's birth month after the expiration date of the escrow officer license with the longest remaining term in order to align all existing escrow officer licenses. After this initial alignment period, an escrow officer will only hold one license. Aligning to the longest existing licensing period will prevent any added regulatory burden on escrow officer license holders during the transition to a single escrow officer license as established by HB 2491 and promote the efficient use of state resources by avoiding proration issues. Additionally, the new language specifies that, after the alignment period, expiration dates are determined under proposed Administrative Rule L-2, Section IV, Subsection A, Paragraph 1.

Add new Section IV, Subsection A, Paragraph 3, Subparagraph b to specify that TDI will not charge an additional fee or require a renewal application before the renewal date for license terms extended beyond two years. This will prevent any added regulatory burden on escrow officer license holders during the transition to a single escrow officer license and promote the efficient use of state resources.

Add new Section IV, Subsection A, Paragraph 3, Subparagraph c to specify that escrow officer license holders are not required to obtain additional continuing education during an extended license period. This will prevent any added regulatory burden on escrow officer license holders during the transition to a single escrow officer license.

In proposed Section IV, Subsection B, Paragraph 1 (current Section V, Subsection B), delete the reference to the existing staggered renewal system, to specify that the fee may be paid by the escrow officer license holder or the appointing title insurance agent or direct operation, and to clarify that meeting existing continuing education requirements under Insurance Code §2652.058(a) and Procedural Rule P-28 is a requirement for license renewal. Also, delete the provision in Paragraph 2 regarding proration, because an escrow officer license would not be renewed for less than two years.

In proposed Section IV, Subsection B, Paragraph 2 (current Section V, Subsection C), implement HB 2491 by specifying that the responsibility for renewing a license is on the escrow officer license holder, and delete the reference to the proper rider for the escrow officer's bond being required, as updated bond documentation would no longer be required.

In proposed Section IV, Subsection B, Paragraph 3 (current Section V, Subsection D), specify the amount of the late fee, and state that it is one-half of the original license renewal fee.

In proposed Section IV, Subsection B, Paragraph 4 (current Section V, Subsection E), provide that, if a license is expired for more than 90 days, all escrow officer appointments are canceled. Additionally, provide more detail regarding the existing new licensure requirement.

In proposed Section IV, Subsection C, Paragraph 1 (current Section IV, Subsection B), implement HB 2491 by specifying that only escrow officers may surrender their license, and reduce the regulatory burden by reducing the documentation required for the surrender of the license.

In proposed Section IV, Subsection C, Paragraph 2 (current Section IV, Subsection C), specify that the surrender of a license is effective when TDI receives the written notice, and delete the reference to the updated bond.

Add new Section IV, Subsection C, Paragraph 3 to implement HB 2491 by specifying that all current appointments under the escrow officer license are canceled on termination of the license in accordance with Insurance Code §2652.1511(d).

Add new Section IV, Subsection C, Paragraph 4 to specify that a title insurance agent or direct operation may remove an individual from its escrow officer's schedule bond and decrease the aggregate amount of the bond on the surrender of that individual's escrow officer license.

Delete Section VI, because this provision is no longer required with HB 2491.

In proposed Section V (current Sections VII and VIII), require notification of a change in mailing and email address and telephone number, in addition to a change in residential address, and reference the new proposed Escrow Officer Name or Address Change Request (FINT01) form. For a notice of escrow officer name change, shift the responsibility of an escrow officer name change notice from the title insurance agent or direct operation to the escrow officer, to reduce the amount of documentation required with the notice in order to reduce the regulatory burden.

Item 2018-11. Adopt the Application for Escrow Officer License (FINT132) form for an escrow officer license applicant to use to apply for an escrow officer license under Administrative Rule L-2, Section II, as proposed. Information within brackets is subject to change.

Item 2018-12. Adopt the Escrow Officer Appointment (FINT09) form for a title insurance agent or direct operation to use to appoint an escrow officer and to cancel the appointment of an escrow officer. Information within brackets is subject to change.

Item 2018-13. Adopt the Escrow Officer License Renewal Application (FINT02) form for an escrow officer to use to renew their license under Administrative Rule L-2, Section IV, Subsection B, as proposed. Information within brackets is subject to change.

Item 2018-14. Adopt the Escrow Officer Name or Address Change Request (FINT01) form for an escrow officer to use to notify TDI if an escrow officer's name, residential, mailing, or email address, or telephone number changes, as required under Administrative Rule L-2, Section V, as proposed. Information within brackets is subject to change.

Item 2018-15. Amend Administrative Rule L-3 to make organizational changes so different sections can be more easily cited. The proposed changes to Administrative Rule L-3 are intended to align to Administrative Rule L-1, as proposed. As proposed, Section I will address general requirements of direct operations; Section II will address direct operation license application requirements and license issuance; Section III will address the appointment of a direct operation by another title insurance company; Section IV will address direct operation license expiration, renewal, and surrender; and Section V will address requirements regarding changes in operation.

Delete the undesignated first paragraph, because the substantive content of this paragraph is addressed elsewhere within Administrative Rules, L-3, as proposed.

Add new Section I, Subsection A, Paragraphs 1 - 2 to address the statutory requirements in Insurance Code §2651.051.

Add new Section I, Subsection A, Paragraph 3 to address the bond or deposit required to act as a direct operation. A direct operation is responsible for the bond or deposit requirements of an appointed escrow officer.

Add new Section I, Subsection A, Paragraph 4 to address the requirements for direct operations employing an escrow officer, including the new appointment requirements under HB 2491. These requirements conform to Insurance Code §2652.001. This topic is currently only addressed in Administrative Rule L-2. These requirements are being added here because they are requirements of direct operations, not escrow officers.

Add new Section I, Subsection B to clearly inform direct operation license holders of their obligations regarding their records.

Add new Section I, Subsection C to address information TDI is proposing to delete from the first paragraph of Administrative Rules, L-3, and to note that forms may be submitted to TDI electronically.

Add new Section I, Subsection D to address TDI's proposed change regarding the FINT120 form. As proposed, direct operations must maintain a current and complete FINT120 form, but, in order to reduce the regulatory burden, TDI will only require direct operations to provide it on request.

Add new Section II, Subsection A to address the existing limitation currently within the definition of "Federal Identification Number" and the first paragraph of Administrative Rules, L-3. Delete the other references to this limitation.

In proposed Section II, Subsection B (current Section I, Subsection 1), specify that a direct operation license applicant must use the new proposed FINT143 form, instead of the currently used Application for Texas Direct Operation License (FINT130) form.

Add new Section II, Subsection B, Paragraph 1 to address existing fingerprint requirements under 28 TAC §1.503 - §1.504. TDI proposes new Subparagraphs a and b to specify who must submit the new proposed FINT08 form.

Add new Section II, Subsection B, Paragraph 2 to require a copy of the applicant's Assumed Name Certificate if an assumed name is used.

Add new Section II, Subsection B, Paragraph 3, Subparagraph a to require a direct operation license applicant to attest that the direct operation has a current Schedule D.

In proposed Section II, Subsection B, Paragraph 3, Subparagraph b (current Section I, Subsection 3), no longer require the submission of the FINT120 form, in order to reduce the regulatory burden. As proposed, TDI will only require the direct operation to attest that its abstract plant has met requirements and keep a current and completed FINT120 form available for TDI inspection.

In proposed Section II, Subsection B, Paragraph 4 (current Section I, Subsection 5), address existing bond or deposit requirements and add detail on how an applicant can demonstrate compliance. Additionally, add provisions regarding escrow officer bond or deposit requirements that currently exist in Administrative Rule L-2 here because the bond or deposit requirements are obligations of the title insurance agent or direct operation, not the escrow officer. TDI is not proposing any new requirements for bonds or deposits.

Add new Section II, Subsection B, Paragraph 5 to require that an applicant demonstrate compliance with the capitalization requirements in Insurance Code §2651.012.

Redesignate Section I, Subsection 4 as Section II, Subsection B, Paragraph 6.

Redesignate Section I, Subsection 2 as Section II, Subsection B, Paragraph 7.

Add new Section III to address appointments of direct operations by other title insurance companies. The requirements of Section III are consistent with the requirements of Administrative Rule L-1, Section III, as proposed, with the exception of the provisions that do not apply to direct operations.

Add new Section III, Subsection A, Paragraph 1 to specify what must be submitted to TDI to make an appointment.

Add new Section III, Subsection A, Paragraph 2 to address the date an appointment is effective under Insurance Code §2651.009(c-2).

Add new Section III, Subsection A, Paragraph 3 to specify that direct operations may act for multiple title insurance companies in a county under Insurance Code §2651.009(a).

Add new Section III, Subsection A, Paragraph 4 to specify that appointments do not need to be renewed under Insurance Code §2651.009(e).

In proposed Section III, Subsection B, Paragraph 1 (current Section II, Subsection C), incorporate the new proposed approach to licenses and appointments. As proposed, a title insurance company will only be required to submit the new FINT10 form and, in order to reduce the regulatory burden, will no longer be required to submit the agent contract, a FINT141 form, a FINT120 form, or a FINT129 form with each change in county under an appointment. Instead, as proposed, the title insurance company will only be required to attest that the direct operation has a current Schedule D, has an agent contract, and meets the requirements regarding abstract plants.

Add new Section III, Subsection B, Paragraph 2 to address the date an appointment to an additional county is effective.

Add new Section III, Subsection C, Paragraph 1 to explain the effect of terminating an appointment in accordance with Insurance Code §2651.009(f).

Add new Section III, Subsection C, Paragraph 2 to specify that an appointment is terminated when a direct operation is no longer authorized to operate in any counties.

Add new Section III, Subsection C, Paragraph 3 to specify how a direct operation or title insurance company may terminate the direct operation's appointment.

In proposed Section IV, Subsection A (current Section IV, Subsection A-B), modify the existing staggered renewal system and set a direct operation's license expiration at two years after the date of issuance, as authorized under Insurance Code §2651.054.

In proposed Section IV, Subsection B, Paragraph 1 (current Section IV, Subsection B), delete the reference to when the license expires, as that will be addressed in Section IV, Subsection A, as proposed. Additionally, delete the reference to proration, because a license should not be renewed for less than the full two year term.

Redesignate Section IV, Subsections C-D as Section IV, Subsection B, Paragraph 2-3.

In proposed Section IV, Subsection B, Paragraph 4 (current Section IV, Subsection E), specify the effect of a license being ineligible for renewal. This does not modify existing requirements.

Delete Section III, Subsection A, because TDI only needs notice from the direct operation regarding cancellation of its license.

In proposed Section IV, Subsection C (current Section III, Subsection B), replace the term "cancellation" with "surrender," which is the statutorily used term.

In proposed Section V (current Section II), reorganize to be consistent with Administrative Rule L-1, Section V, as proposed. As proposed, Subsection A will address circumstances requiring a new license and Subsection B will address circumstances not requiring a new license.

Add new Section V, Subsection A, Paragraph 1 to specify the only circumstances when a new license is be required. This does not change existing requirements.

Add new Section V, Subsection A, Paragraph 2 to clarify that a direct operation license is non-transferable.

Add new Section V, Subsection B, Paragraph 1, Subparagraph a to require notification of all mergers, exchanges, and conversions prior to the transaction.

Add new Section V, Subsection B, Paragraph 1, Subparagraph b to require a direct operation notify TDI if its name or assumed name changes and to specify that a new name may not be used until the direct operation has been notified by TDI that the license has been updated with the new name.

In proposed Section V, Subsection B, Paragraph 1, Subparagraph c (current Section II, Subsection A), specify that the new proposed FINT129 form is required.

Add new Section V, Subsection B, Paragraph 2 to require direct operations notify TDI of each new manager or designated on-site manager.

In proposed Section V, Subsection B, Paragraph 3 (current Section II, Subsection B), no longer require written notification of changes to a direct operation's title plant, in order to reduce the regulatory burden. Direct operations would only be required to update its records and make them available to TDI on request.

In proposed Section V, Subsection B, Paragraph 4 (current Section IV, Subparagraph F), no longer require that a direct operation file documentation of changes to its bond or deposit, in order to reduce the regulatory burden. A direct operation would only be required to update its documentation regarding changes in its bonds or deposits and make the documentation available to TDI on request.

In proposed Section V, Subsection B, Paragraph 5 (current Section II, Subsection C), only require that the direct operation submit the new proposed FINT10 form and attest that the direct operation has a current Schedule D and meets the requirements regarding abstract plants.

Item 2018-16. Amend Procedural Rule P-28 to implement HB 2491 and to shift the responsibility of reporting course credit hours from license holders to continuing education course providers. Shifting responsibility to course providers will create a more efficient system to verify continuing education compliance and will reduce the regulatory burden on license holders. As part of the implementation of HB 2491, which added Insurance Code §2652.058(g), TDI is proposing to amend the provisions of Procedural Rule P-28 to make them consistent with the provisions of TAC Title 28, Chapter 19, Subchapter K, which sets out the rules for continuing education requirements established by Insurance Code, Chapter 4004. Additionally, amend the language to reference the TDI Administrator throughout to implement HB 2491, and to clarify and reorganize existing requirements.

Delete Section A, Subsection 1, because the substantive information detailed is addressed in other portions of Procedural Rule P-28, as proposed.

In proposed Section I, Subsection A, Paragraph 1 (current Section A, Subsection 2, Paragraph c), amend the definition of "licensee" to only refer to individuals who are required to complete continuing education under Insurance Code §§2651.204 and 2652.058.

In proposed Section I, Subsection A, Paragraph 2 (current Section B, Subsection 1), amend the definition of "management personnel" to only refer to individuals who are required to submit a FINT08 form under Administrative Rules L-1, Section II, Subsection B, Paragraph 1, and L-3, Section II, Subsection B, Paragraph 1 instead of repeating the language from those provisions.

In proposed Section I, Subsection A, Paragraph 3 (current Section A, Subsection 2, Paragraph d), amend the definition of "provider" to add that a provider is an entity, partnership, or individual that provides title insurance continuing education or professional training courses.

In proposed Section I, Subsection A, Paragraph 4 (current Section A, Subsection 2, Paragraph b), amend the defined term to replace "department" with "TDI" to conform with current TDI style guidelines.

Add new Section I, Subsection A, Paragraph 5 to define "TDI Administrator," to implement HB 2491.

Delete Section A, Subsection 2, Paragraph a, which defines "Continuing Education Coordinator," because the term will no longer be used in Procedural Rule P-28, as proposed.

Delete Section A, Subsection 2, Paragraph e, which defines "Certified Transcript," because the term will no longer be used in Procedural Rule P-28, as proposed.

Delete Section A, Subsection 2, Paragraph f, which defines "control," because the term will not be used as currently defined in Procedural Rule P-28, as proposed.

Delete Section A, Subsection 2, Paragraph g, which defines "entity," because the term will no longer be used in Procedural Rule P-28.

In proposed Section I, Subsection B (current Section A, Subsection 10), amend the language to simply specify that forms are available from the TDI website and on request from TDI. Further, specify that forms may be submitted electronically if such submission is available.

Add new Section I, Subsection C to implement HB 2491 by referencing the escrow officer continuing education provider registration and course certification fees required under Insurance Code Chapter 4004, Subchapter C, and established in 28 TAC §19.1012(b).

In proposed Section II, Subsection A (current Section A, Subsection 7), implement HB 2491 by aligning the provisions to the registration requirements established in 28 TAC §19.1005.

In proposed Section II, Subsection A, Paragraph 1 (current Section A, Subsection 7), implement HB 2491 by detailing the information TDI may require in a provider registration application and specifying that the application must include the applicable registration or renewal fee under 28 TAC §19.1012(b)(1).

Add new Section II, Subsection A, Paragraph 2 to specify that a failure to submit a completed application and all of the requested items will result in the rejection of the application.

Add new Section II, Subsection A, Paragraph 3 to specify that a provider may only obtain one registration and that the provider's registration is not contingent on the provider certifying and offering a course.

Add new Section II, Subsection A, Paragraph 4 to implement HB 2491 by specifying that a provider registration expires after two years and that a provider may renew its registration up to 90 days in advance of the expiration date.

Add new Section II, Subsection A, Paragraph 5 to implement HB 2491 by requiring providers who are currently offering certified title insurance continuing education courses, but are not registered as providers, to register.

In proposed Section II, Subsection B (current Section A, Subsection 9), implement HB 2491 by aligning the provisions to the certification requirements established 28 TAC §19.1007.

In proposed Section II, Subsection B, Paragraph 1 (current Section A, Subsection 9, Paragraph a), implement HB 2491 by detailing the information TDI may require in a course certification application and specifying that the application must include the applicable submission fee under 28 TAC §19.1012(b)(2). Additionally, amend the language to no longer automatically approve and certify courses 30 days after the application is filed.

Add new Section II, Subsection B, Paragraph 2 to specify that a failure to submit a completed application and all of the requested items will result in the rejection of the application.

Redesignate Section A, Subsection 9, Paragraph d as Section II, Subsection B, Paragraph 3.

Add new Section II, Subsection B, Paragraph 4 to implement HB 2491 by specifying that a course certification expires after two years and that, if a course is significantly changed, the course requires a new certification.

Delete Section A, Subsection 9, Paragraph b, because, as proposed, TDI will award credit hours for successfully completed State Bar of Texas courses without the course being certified by TDI under Procedural Rule P-28, Section II, Subsection I, Paragraph 3.

Delete Section A, Subsection 9, Paragraph c, because this provision was only temporarily effective.

In proposed Section II, Subsection C (current Section A, Subsection 7, Paragraph i), align the requirements for the assignment of a course to 28 TAC §19.1008. As proposed, Paragraph 1 will address the items TDI may require in order to approve or disapprove a course's assignment; Paragraph 2 will address the restrictions on an assignment; Paragraph 3 will address assignor and assignee responsibilities regarding course information demonstrating compliance with the certification requirements under Procedural Rule P-28, Section II, Subsection B; Paragraph 4 will specify that an assignment does not affect the certification period; Paragraph 5 will specify that an assignee is responsible for complying with Procedural Rule P-28 with respect to the assigned course; Paragraph 6 will specify that TDI may not act on any parties behalf in a dispute; Paragraph 7 will specify when an assignment terminates; and Paragraph 8 will specify that an assignee may not offer an expired course, unless the assignor recertifies the course.

In proposed Section II, Subsection D, Paragraph 1 (current Section A, Subsection 5, Paragraph a), delete the portion of the sentence regarding assisting customers in making informed decisions regarding their insurance needs, because courses should cover broader issues.

Redesignate Section A, Subsection 5, Paragraphs b - e as Section II, Subsection D, Paragraphs 2 - 5.

In proposed Section II, Subsection D, Paragraph 6 (current Section A, Subsection 5, Paragraph f), list the topics in subparagraphs and to clarify some of the topics to more closely align to Insurance Code §§2651.204(c) and 2652.058(c).

In proposed Section II, Subsection D, Paragraph 7 (current Section A, Subsection 5, Paragraph g), add a reference to the State Board of Public Accountancy.

Redesignate Section A, Subsection 5, Paragraph i as Section II, Subsection D, Paragraphs 8.

Add new Section II, Subsection E to implement HB 2491 by addressing instructor requirements established in 28 TAC §19.1005. As proposed, Paragraph 1 will require providers to certify that course instructors meet specific qualifications and Paragraph 2 will require providers to maintain a written statement from the instructor certifying compliance with Paragraph 1.

In proposed Section II, Subsection F, Paragraph 1 (current Section A, Subsection 6, Paragraph a), implement HB 2491 by amending the requirements of a classroom course to align to 28 TAC §19.1009. Specifically, amend the language to require certain monitoring of attendance, a minimum of three students be involved in each presentation of the course, a question and answer and discussion period, that the course pace be set by the instructor, and that the course does not allow for independent completion of the course by students.

In proposed Section II, Subsection F, Paragraph 2 (current Section A, Subsection 6, Paragraph b), implement HB 2491 by amending to align to 28 TAC §19.1009. Specifically, amend the language to specify that the course must be designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified.

In proposed Section II, Subsection G, Paragraph 1 (current Section A, Subsection 8, Paragraphs a), implement HB 2491 by aligning the language with the requirements to 28 TAC §19.1011. Specifically, specify that attendance rosters must be used and that another assessment measure may not be used in an attendance roster's place. Proposing to specify that sign-in and sign-out sheets requiring certain student information must be used. Additionally, delete the reference to partial credit for a course, because partial credit will no longer be given, as proposed.

In proposed Section II, Subsection G, Paragraph 2 (current Section A, Subsection 8, Paragraph b), implement HB 2491 by aligning the language with the requirements to 28 TAC §19.1011.

Specifically, specify that a written, online, or computer-based examination may be used as a means of completion of the course, a provider is not required to monitor the final examination, and that certain records regarding examination attempts must be kept.

Redesignate Section A, Subsection 8, Paragraph b, Subparagraphs 1 - 7 as Section II, Subsection G, Paragraph 2, Subparagraphs a - g.

Add new Section II, Subsection G, Paragraph 2, Subparagraphs h - k to specify what type of examination questions may be used, the number of questions required, what materials may be used by the license holder when taking an exam, and that the examination must be mailed or delivered directly to the provider to align with 28 TAC §19.1011.

In proposed Section II, Subsection H, Paragraph 1 (current Section A, Subsection 8, Paragraph c), implement HB 2491 by requiring providers to issue certificates of completion within 30 calendar days of the completion of the course and to add detail regarding the requirements of certificates of completion to align with 28 TAC §§19.1007 and 19.1011. Additionally, delete the reference to a certificate of completion or certified transcript covering multiple licenses, because multiple licenses will no longer be held.

Add new Section II, Subsection H, Paragraph 2 to require that providers report course completions to TDI or the TDI Administrator within 30 calendar days.

In proposed Section II, Subsection I (current Section A, Subsection 7), implement HB 2491 by amending the language to align credit hour calculations with 28 TAC §19.1010 and replace the terms "teach" or "teacher" with "instruct" or "instructor" throughout.

In proposed Section II, Subsection I, Paragraph 1 (current Section A, Subsection 7, Paragraph a), amend to grant credit hours at a rate of one hour for every 50 minutes of actual instruction time, plus additional partial hours of credit in half-hour increments.

In proposed Section II, Subsection I, Paragraph 2 (current Section A, Subsection 7, Paragraph b), amend to award credit based on the average completion time or the average number of hours of the credit hours other states award.

In proposed Section II, Subsection I, Paragraph 3 (current Section A, Subsection 7, Paragraph c and Section A, Subsection 5, Paragraph h), amend to award credit hours for State Board of Public Accountancy courses in addition to State Bar of Texas courses.

In proposed Section II, Subsection I, Paragraph 4 (current Section A, Subsection 7, Paragraph d), specify that law school courses may also qualify for credit hours.

In proposed Section II, Subsection I, Paragraph 5 (current Section A, Subsection 7, Paragraph e), amend to set the number of credit hours awarded for course preparation equal to the number of hours of course instruction and no longer require that a course provider report course preparation hours of an instructor.

Delete Section A, Subsection 7, Paragraph f, because TDI will no longer grant partial credit for partially completed courses.

In proposed Section II, Subsection I, Paragraph 6 (current Section A, Subsection 7, Paragraph g), provide that credit for any single course will only be given once in a reporting period, whether instructing the course or completing it as a student.

Delete Subsection A, Subsection 7, Paragraph h, because, as proposed, license holders will no longer be required to report continuing education credit hours. Providers would be responsible for reporting course completions.

In proposed Section III, Subsection A, Paragraph 1 (current Section A, Subsection 3, Paragraph a), specify the number of credit hours required within this provision and add that credit hours may only be applied to a single reporting period and that excess hours may not be carried forward to the next reporting period. Additionally, increase the number of required ethics hours from one credit hour to two credit hours to improve industry knowledge of ethical issues and bring about greater protection of the public. The total number of required credit hours is not being modified.

Redesignate Section A, Subsection 3, Paragraphs b as Section III, Subsection A, Paragraphs 2.

In proposed Section III, Subsection A, Paragraph 3 (current Section A, Subsection 3, Paragraph c), amend to only address the proration of continuing education requirements for new license holders with initial reporting periods of less than 24 months. Modify the proration chart to evenly distributed the credit hours through the 23 month prorated period; each month period's credit hour requirement is rounded down to the nearest whole credit hour. As proposed, the chart will begin at six months, because initial license periods should no longer be less than six months. Additionally, amend to require two ethics credit hours regardless of the length of the reporting period.

Add new Section III, Subsection A, Paragraph 4 to specify the circumstances when self-study courses may be completed under Insurance Code §2651.204(d) and §2651.058(d) and to limit the total amount of self-study credit hours allowed.

Add new Section III, Subsection A, Paragraph 5 to specify that a license holder must complete at least 50 percent of their required continuing education hours in classroom courses.

In proposed Section III, Subsection B, Paragraph 1 (current Section A, Subsection 4), combine Paragraphs a and b, and to modify some of the requirements regarding documentation in order to broaden what may be submitted to support the application.

Add new Section III, Subsection B, Paragraph 2 to specify that license holders who meet certain qualifications pertaining to their military service or that of their spouse may request an extension of time for the license holder to comply with the continuing education requirements or an exemption from all or part of the requirements as provided in 28 TAC §19.803.

Delete Section A, Subsection 12, Paragraph a, because the substance of this provision is sufficiently addressed in Section III, Subsection A, as proposed.

Delete Section A, Subsection 12, Paragraph b, because providers would be responsible for reporting course completions, not license holders.

In proposed Section III, Subsection C, Paragraph 1 (current Section A, Subsection 13, Paragraph a), amend the language to no longer require license holders to submit evidence of course completion and to specify that relevant records must be maintained if the records or the licensee's compliance is the subject of an investigation or audit.

In proposed Section III, Subsection C, Paragraph 2 (current Section A, Subsection 12, Paragraph c), amend the language to reflect the proposed requirement that providers report course completions and delete the reference to certified transcripts, because they would no longer be used to show course completions.

In proposed Section III, Subsection C, Paragraph 3 (current Section A, Subsection 13, Paragraph b), align the provision with 28 TAC §19.1014. Specifically, add detail regarding what records must be maintained.

Add new Section III, Subsection C, Paragraph 4 to require providers to furnish course completion information to TDI or the TDI Administrator if requested to align with 28 TAC §19.1014.

In proposed Section III, Subsection C, Paragraph 5 (current Section A, Subsection 13, Paragraph c), align the provision with 28 TAC §19.1014. Specifically, state that TDI or the TDI Administrator may conduct an audit without prior notice and attend courses without identifying themselves as employees of TDI or the TDI Administrator. Further, delete the reference to licensees, because this provision would only pertain to providers, as proposed.

Add new Section III, Subsection C, Paragraph 6 to specify that TDI will rely on provider records and that it is an individual's responsibility to notify TDI of any inaccuracies.

In proposed Section III, Subsection D, Paragraph 1 (current Section A, Subsection 14, Paragraph a), add a reference to an extension.

In proposed Section III, Subsection D, Paragraph 2 (current Section A, Subsection 14, Paragraph b), specify that a provider may also be subject to disciplinary action beyond having their courses removed from the list of certified courses.

In proposing Section III, Subsection D, Paragraph 3 (current Section A, Subsection 14, Paragraph c), amend the language to allow continuing education to be completed during the 90 day late renewal period and to specify that a license is not eligible for renewal, unless continuing education requirements have been met.

Delete Section A, Subsection 11, because TDI has determined that these provisions are not necessary or required under statute.

Delete Section B, Subsection 2, because it repeats provisions more appropriately addressed in Administrative Rule L-1.

In proposed Section IV, Subsection A, Paragraph 1 (current Section B, Subsection 3), replace some of the existing language with the "management personnel" defined term and clarify that direct operation management personnel are also subject to professional training requirements. Further, delete the previously applicable implementation language.

In proposed Section IV, Subsection A, Paragraph 2 (current Section B, Subsection 4), amend the language to include experience with a direct operation.

Add new Section IV, Subsection A, Paragraph 3 to specify that management personnel who are required to complete professional training must submit proof of compliance with their title insurance agent or direct operation license application.

Redesignate Section B, Subsection 7 as Section IV, Subsection A, Paragraph 4.

In proposed Section IV, Subsection B, Paragraph 1 (current Section B, Subsection 10), require that providers of professional training courses register in compliance with Section II, Subsection A.

In proposed Section IV, Subsection B, Paragraph 2 (current Section B, Subsection 5, Paragraph a), require that providers certify their courses in compliance with Section II, Subsection B.

Redesignate Section B, Subsection 5, Paragraph b as Section IV, Subsection B, Paragraph 3.

Redesignate Section B, Subsection 9 as Section IV, Subsection B, Paragraph 4.

Add new Section IV, Subsection B, Paragraph 5 to specify that providers of professional training courses may assign courses under proposed Section II, Subsection C.

Add new Section IV, Subsection B, Paragraph 6 to specify that providers must comply with proposed Section II, Subsections E and G relating to instructor requirements and course requirements for successful completion, respectively.

In proposed Section IV, Subsection B, Paragraph 7 (current Section B, Subsection 8), reference the new proposed Section II, Subsection H, Paragraph 1 regarding certificates of completion.

Add new Section IV, Subsection B, Paragraph 8 to specify that professional training course credit hours will be calculated under Section II, Subsection I.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mike Carnley, special assistant for innovation and technology for Administrative Operations Division, has determined that, for each year of the first five years the amendments are in effect, there will be no fiscal impact on state and local governments as a result of the enforcement or administration of the proposed provisions, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Carnley expects public benefits from adopting rules implementing HB 2491, SB 807, and SB 1307, streamlining and modernizing the licensing and continuing education processes, increasing compliance with continuing education requirements, and reducing the regulatory burden on license holders and others.

Mr. Carnley anticipates overall reduced costs of compliance for title insurance agents, direction operations, and escrow officers under Administrative Rules L-1, L-2, and L-3, and Procedural Rule P-28, as proposed. Specifically, the number of required notices to TDI will be reduced and the amount of documentation required with notices will be reduced. Additionally, license holders will no longer be required to report their own continuing education hours.

Mr. Carnley anticipates that license holders complying with proposed Administrative Rules L-1, Section I, Subsection E; L-2, Section I, Subsection G; L-2, Section V; and L-3, Section V, Subsection B, Paragraphs 1 - 2; and Procedural Rules P-28, Section II, Subsection H, Paragraph 2; and P-28, Section III, Subsection B, Paragraph 2, may incur additional costs of compliance that are not created as a result of statute.

Individuals requesting a waiver, extension, exemption, or alternative licensing requirement under proposed Administrative Rules L-1, Section I, Subsection E; and L-2, Section I, Subsection G; and Procedural Rule P-28, Section III, Subsection B,

Paragraph 2, may incur additional costs of compliance related to submitting the request. Costs of compliance with submission requirements under these provisions will vary based on the resources available to the individual. Cost components for an individual required to comply with submission requirements under these provisions include the cost to gather the information, prepare the information for submission, and complete and submit the required information.

TDI believes that the information being requested should be available to the individual and that the individual should be able to submit the information. Costs may arise from copying the additional one to three pages of information or converting the information into an electronic document, and costs may arise from submitting the information to TDI by mail or electronically. While it is not feasible to determine the actual cost for every situation, TDI estimates the additional cost of an individual submission to TDI would be less than $5 if mailed and less than that if submitted electronically.

Escrow officers may incur additional costs of compliance with the new required notice to TDI for a change in name, email address, mailing address, or telephone number under proposed Administrative Rule L-2, Section V. Currently, escrow officers are only required to give notice of a change in residential address and the appointing title insurance agent or direct operation is responsible for the notice to TDI of a name change. Costs of compliance with the notice requirements under these provisions will vary based on the resources available to the escrow officer. Cost components for an escrow officer required to comply with these provisions include the cost to gather the information, prepare the information for submission, and complete and submit the required information.

TDI believes that the information being requested should be readily available to the escrow officer and that the escrow officer should be able to submit the information. Costs may arise from copying one to four pages of information that may need to be attached, or converting the documents into an electronic document, and submitting the information to TDI by mail or electronically. While it is not feasible to determine the actual cost for every situation, TDI estimates the additional cost of an individual notice to TDI would be less than $5 if mailed and less than that if submitted electronically.

Direct operations may incur additional costs of compliance with the new required notices for (1) mergers, exchanges, and conversions; (2) changes in name or assumed name; and (3) new managers or designated on-site managers under proposed Administrative Rule L-3, Section V, Subsection B, Paragraphs 1 - 2. Costs of compliance with the notice requirements under these provisions will vary based on the resources available to the direct operation. Cost components for a direct operation required to comply with these provisions include the cost to gather the information, prepare the information for submission, and complete and submit the required information.

TDI believes that the information being requested should be readily available to the direct operation and that the direct operation should be able to submit the information. Costs may arise from copying one to four pages of information that may need to be attached, or converting the documents into an electronic document, and submitting the information to TDI by mail or electronically. While it is not feasible to determine the actual cost for every situation, TDI estimates the additional cost of a direct operation notice to TDI would be less than $5 if mailed and less than that if submitted electronically.

Continuing education providers may incur additional costs of compliance when reporting continuing education course completion information to TDI or the TDI Administrator under proposed Procedural Rule P-28, Section II, Subsection H, Paragraph 2. Costs of compliance with the reporting requirements will vary depending on the resources available to the provider. Cost components include the cost to gather the information, prepare the information, and submit it to TDI or the TDI Administrator.

TDI believes that the information being reported should be readily available to the provider as the provider is currently required to maintain information regarding course completions. Electronic delivery will be preferred, which should have almost no identifiable cost. While it is not feasible to determine the actual cost for every situation, TDI estimates the additional cost of submitting an individual course completion report to TDI or the TDI Administrator after each course would be less than $4.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002(c), TDI has determined that the proposed Administrative Rules L-1, Section I, Subsection E; L-2, Section I, Subsection G; L-2, Section V; and Procedural Rules P-28, Section II, Subsection H, Paragraph 2; and P-28, Section III, Subsection B, Paragraph 2, will have an adverse economic effect on small or micro businesses and individual license holders. There are up to approximately 731 small or micro businesses affected by these amendments, up to approximately 561 title insurance agents and 170 escrow officers. In accordance with Government Code §2006.002(c-1), TDI considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

Proposed Administrative Rules L-1, Section I, Subsection E; and L-2, Section I, Subsection G; and Procedural Rule P-28, Section III, Subsection B, Paragraph 2

The objective of proposed Administrative Rules L-1, Section I, Subsection E; and L-2, Section I, Subsection G; and Procedural Rule P-28, Section III, Subsection B, Paragraph 2, is to implement SB 807 and SB 1307, and Insurance Code §36.109. These provisions relate to licensing and continuing education requirements for military service members, military veterans, and military spouses. The exact number of those affected is unknown; however, each affected license holder is an individual. The costs associated with these provisions arise from gathering information and submitting it with a request to TDI that the individual desires to take advantage of the licensing or continuing education waivers, extensions, exemptions, or alternative licensing requirements authorized in 28 TAC §19.803. No costs are paid to TDI.

TDI considered the following other regulatory methods to accomplish the objectives of these provisions while minimizing any adverse impact on small and micro businesses: (i) not adopting these provisions, (ii) not requiring the submission of information or a request for individuals wanting to take advantage of the licensing or continuing education waivers, extensions, exemptions, or alternative licensing requirements authorized in 28 TAC §19.803, or (iii) adopting different requirements for individuals wanting to take advantage of the licensing or continuing education waivers, extensions, exemptions, or alternative licensing requirements authorized in 28 TAC §19.803.

Not proposing Administrative Rules L-1, Section I, Subsection E; and L-2, Section I, Subsection G; or Procedural Rule P-28, Section III, Subsection B, Paragraph 2. Occupations Code, Chapter 55 requires a state agency to adopt rules relating to the licensing of military service members, military veterans, and military spouses. These provisions are TDI's proposed rule to comply with this requirement for title insurance agents and escrow officers. Therefore, if TDI did not propose these provisions, it would not be in compliance with Occupations Code, Chapter 55. In addition, without these provisions, military service members, military veterans, and military spouses would have no guidance on how to take advantage of the opportunities provided by Occupations Code, Chapter 55. For these reasons, TDI rejects this option.

Not requiring the submission of information or a request for individuals wanting to take advantage of the licensing or continuing education waivers, extensions, exemptions, or alternative licensing requirements authorized in 28 TAC §19.803. TDI rejects this option for the following reasons: (i) without the request, TDI will not know that the individual seeks to take advantage of these waivers, extensions, exemptions, or alternative licensing requirements; and (ii) without the information, TDI will not know that the individual qualifies under statute and rule.

Adopting different requirements for individuals wanting to take advantage of the licensing or continuing education waivers, extensions, exemptions, or alternative licensing requirements authorized in 28 TAC §19.803. It is necessary that TDI have sufficient information to verify that an individual is qualified take advantage of these provisions, and in drafting these provisions, TDI attempted to balance its need for information with the burden the requirement places on an individual in order to minimize costs for the individual. In addition, any changes to the required information would likely still result in the same costs to the individual. For these reasons, TDI rejects this option.

TDI, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of proposed Administrative Rules L-1, Section I, Subsection E; and L-2, Section I, Subsection G; or Procedural Rule P-28, Section III, Subsection B, Paragraph 2 for individual license holders.

Proposed Administrative Rule L-2, Section V

The objective of the new required notices in proposed Administrative Rules L-2, Section V is to keep TDI records up to date with changes in escrow officer contact information. Up-to-date license holder contact information is vital for TDI's regulation of license holders. There were 7,191 individuals licensed as escrow officers in fiscal year 2017. The costs associated with these provisions arise from gathering information, preparing it for submission, and submitting it to TDI. No costs are paid to TDI.

TDI considered the following other regulatory methods to accomplish the objectives of these provisions while minimizing any adverse impact on small and micro businesses: (i) not modifying the existing provisions, (ii) adopting different requirements for small or micro businesses, or (iii) not requiring the new notices.

Not modifying the existing provisions. The existing provisions, Administrative Rule L-2, Sections VII-VIII, require an escrow officer to notify TDI when the escrow officer's residential address changes and the appointing title insurance or direct operation to notify TDI when an escrow officer's name changes. If TDI only has a residential address for an escrow officer, it can impede effective communication between TDI and the escrow officer. First, a mailing address may be required to communicate by mail if it is not the same as the residential address. Second, communication by phone or email is more efficient and generally preferred by both TDI staff and the public for routine matters based on TDI staff's experience.

HB 2491 shifted most of the escrow officer license maintenance responsibilities from the appointing title insurance agent or direct operation to the escrow officer. Shifting the name change notice responsibilities to the escrow officer is in line with the legislative intent behind HB 2491. Further, shifting the responsibilities would provide for greater overall efficiency to a name change notice. Currently, because an escrow officer may be appointed by multiple title insurance agents and direct operations, multiple name change notices from the appointing title insurance agents and direct operations may be required. If an escrow officer is required to provide the notice, only one submission to TDI is required. For these reasons, TDI rejects this option.

Adopting different requirements for small or micro businesses. TDI rejects this option because all licensed escrow officers are either small or micro businesses or individuals. It would not be reasonable to differentiate between small or micro business licensees and individual licensees, who likely have resources at their disposal.

Not requiring the new notices. TDI rejects this option because without the information provided in the notices, TDI will not be able to effectively communicate with or regulate licensed escrow officers. TDI attempted to balance its need for information with the burden the requirement places on an individual in order to minimize costs for the individual.

After balancing the interests, TDI does not believe the requirements of proposed Administrative Rules L-2, Section V should be waived or modified for licensed escrow officers.

Proposed Procedural Rule P-28, Section II, Subsection H, Paragraph 2

The objective of the new continuing education course completion reporting requirement for providers in proposed Procedural Rule P-28, Section II, Subsection H, Paragraph 2 is to reduce the regulatory burden on individual license holders and to create a more efficient system to verify continuing education compliance with Insurance Code §§2651.0021, 2651.204, and 2652.058. There are 22 title insurance continuing education providers currently offering courses. Based on the information available to TDI, it appears up to three providers may be considered small or micro businesses. The costs associated with this provision arise from gathering information, preparing it for submission, and submitting it to TDI. No costs are paid to TDI.

TDI considered the following other regulatory methods to accomplish the objectives of these provisions while minimizing any adverse impact on small and micro businesses: (i) continuing to require individual license holders to report their continuing education credit hours, (ii) not requiring either the individual licensee or the continuing education provider to report their continuing education credit hours, or (iii) adopting different requirements for small or micro business continuing education providers.

Continuing to require individual license holders to report their continuing education credit hours. Procedural Rule P-28, Sections II, Subsection 12, Paragraph b, currently requires individual license holders to attach copies of course completion certificates or a certified transcript to their license renewal application. Beyond individual license holders incurring the costs of reporting

continuing education credit hours, this method requires TDI to review and verify each certificate of completion or certified transcript for each renewal application received. If a license holder does not have enough qualifying credit hours or TDI determines that a submitted certificate of completion or certified transcript does not meet requirements, their license may not be eligible for renewal. The current process is inefficient and can cause delays in the license renewal process. If providers reported course completions after each completion, TDI could maintain up-to-date continuing education records for each license holder, which would be accessible to the license holder. TDI and a license holder would know whether the license holder had the required continuing education credit hours before the renewal application is submitted. This change will reduce the regulatory burden on individual license holders and improve the efficiency of the renewal process. These benefits outweigh the small increase in costs providers will incur. Plus, providers will most likely be able to recoup any additional costs by passing them onto their students through the fee charged for their courses. For these reasons, TDI rejects this option.

Not requiring either the individual licensee or the continuing education provider to report their continuing education credit hours. TDI rejects this option because without license holder continuing education course completion information, TDI could not verify compliance with continuing education requirements of Insurance Code §2651.0021, §2651.204, and §2652.058.

Adopting different requirements for small or micro business continuing education providers. If TDI adopted different requirements for small or micro businesses, such as license holders reporting course completion information instead of providers, it would only shift costs from one small or micro business to the individual license holders who are students. Further, it would introduce confusion into the continuing education compliance verification system. TDI could not know if its records were accurate until the time of renewal if some course completion information was received from providers as courses were completed and some from license holders on renewal. This would remove most of the benefit this amendment is intended to provide. For these reasons, TDI rejects this option.

After balancing the interests, TDI does not believe the requirements of proposed Procedural Rule P-28, Section II, Subsection H, Paragraph 2 should be waived or modified for small or micro business continuing education providers.

TDI does not anticipate that proposed Administrative Rule L-3, Section V, Subsection B, Paragraph 1 will affect small or micro businesses. Out of the 11 active direct operation license holders, none are small or micro businesses. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for TDI to address proposed Administrative Rule L-3, Section V, Subsection B, Paragraph 1 in its regulatory flexibility analysis.

TDI has determined that the proposal will not have an adverse economic effect on rural communities. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for TDI to address rural communities in its regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposal imposes a possible cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because the proposal is necessary to implement HB 2491, SB 807, and SB 1307; and to reduce the burden imposed on regulated persons by the rule.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule would be in effect, the proposed rule or its implementation:

(1) does not create or eliminate a government program;

(2) does not require the creation of new employee positions or the elimination of existing employee positions;

(3) does not require an increase or decrease in future legislative appropriations to the agency;

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

(5) creates new regulations to implement HB 2491, SB 807, and SB 1307;

(6) expands, limits, and repeals existing regulations;

(7) does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) does not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5:00 p.m., Central time, on July 30, 2018. TDI requires two copies of your comments. Send one copy to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to Jamie.Walker@tdi.texas.gov, or to Jamie Walker, Deputy Commissioner, Financial Regulation Division, Mail Code 113-1F, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Separately, submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If TDI holds a hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI amends 28 TAC §9.1 under Insurance Code §2551.003, §2651.0021, §2651.204, §2652.058, §2703.208, §4003.002, and §36.001, and Occupations Code §55.002 and §55.004.

Insurance Code §2551.003 authorizes the Commissioner to adopt and enforce rules that TDI determines are necessary to accomplish the purposes of Title 11, Insurance Code, concerning title insurance regulation.

Insurance Code §2651.0021 provides that the Commissioner adopt by rule a professional training program for a title insurance agent and the management personnel of the title insurance agent.

Insurance Code §2651.204 provides that the Commissioner adopt rules to administer that section, which relates to the required continuing education of title insurance agents.

Insurance Code §2652.058 provides that the Commissioner adopt rules to administer that section, which relates to the required continuing education of escrow officers.

Insurance Code §2703.208 allows additions or amendments to the *Basic Manual* to be proposed and adopted by reference by publishing notice of the proposal or adoption in the *Texas Register.*

Insurance Code §4003.002 provides that the Commissioner may adopt by rule a system under which licenses expire on various dates during a licensing period.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Occupations Code §55.002 provides a state agency that issues a license adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency, that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

Occupations Code §55.004 provides that a state agency that issues a license adopt rules for the issuance of the license to an applicant who is a military service member, military veteran, or military spouse and holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state, or held the license in Texas within the five years preceding the application date.

CROSS-REFERENCE TO STATUTE. This proposal implements the following statutes:

Amended 28 TAC §9.1 affects Insurance Code §§2651.001 - 2651.004, 2651.006 - 2651.010, 2651.012, 2651.051-2651.055, 2651.101, 2651.102, 2651.201, 2651.204, 2651.206, §§2652.001 - 2652.003, 2652.051 - 2652.053, 2652.055 - 2652.058, 2652.101 - 2652.103, 2652.151 - 2652.153, §§4003.002, and 4004.101 - 4004.104; and Occupations Code §§55.001 - 55.004, and 55.009.

§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 August 1, 2018 [~~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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 15, 2018.

TRD-201802705
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 676-6584

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 94. NURSE AIDES

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS, codified in Title 40, Part 1, govern functions previously performed by DADS that have transferred to HHSC. To consolidate the rules of HHSC in one title of the Texas Administrative Code, some of the rules in Title 40, Part 1, will be repealed and new rules that are substantially the same will be adopted in Title 26, Part 1. If a chapter or section in Title 40 that is being repealed is still referenced in another rule under HHSC's authority, a new section will be adopted in Title 40 that provides a reference to the new chapter or section in Title 26. Therefore, as part of the consolidation, HHSC proposes the repeal of §§94.1 - 94.13, and new §94.1 in Chapter 94, Nurse Aides, of Title 40, Part 1.

BACKGROUND AND PURPOSE

The Texas Secretary of State created Title 26, Part 1 of the Texas Administrative Code to consolidate rules that govern functions of HHSC. These rules are currently in Titles 1, 25, and 40. As part of the consolidation into Title 26, HHSC proposes to repeal the rules in Title 40, Chapter 94. New rules in Title 26, Chapter 556, Nurse Aides, are proposed elsewhere in this issue of the *Texas Register* and are substantially the same as the rules proposed for repeal. In addition, HHSC proposes new §94.1, which explains that references in the Texas Administrative Code to Title 40, Chapter 94, or rules in Chapter 94, are references to Title 26, Chapter 556, or rules in Chapter 556.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§94.1 - 94.13 allows similar rules to be proposed as new rules in Title 26, Chapter 556.

Proposed new §94.1, Reference to Chapter 94, explains that references in the Texas Administrative Code to Title 40, Chapter 94, or sections in Chapter 94, are references to Title 26, Chapter 556, or sections in Chapter 556. This new section will be repealed when all references to Chapter 94 in rules under the authority of HHSC have been removed.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

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

(5) the proposed rules will create a new rule;

(6) the proposed rules will expand, limit, or repeal an existing rule;

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules proposed for repeal are substantially the same as the new rules being proposed in Title 26, Chapter 556.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT

Cecile Erwin Young, Interim Executive Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be the consolidation of all HHSC rules in new Title 26, Part 1 of the Texas Administrative Code.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on DADS Chapter 94" in the subject line.

40 TAC §§94.1 - 94.13

STATUTORY AUTHORITY

The repealed rules are authorized by Texas Government Code §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation of, and provision of services by, the health and human services system, and §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code, Chapter 250, which requires DADS to maintain a Nurse Aide Registry.

The repealed rules implement Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code, Chapter 250.

§94.1. Basis.

§94.2. Definitions.

§94.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.

§94.4. Filing and Processing an Application for a Nurse Aide Training and Competency Evaluation Program (NATCEP).

§94.5. Program Director, Program Instructor, Supplemental Trainers, and Skills Examiner Requirements.

§94.6. Competency Evaluation Requirements.

§94.7. Review and Reapproval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

§94.8. Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

§94.9. Nurse Aide Registry and Renewal.

§94.10. Expiration of Active Status.

§94.11. Waiver, Reciprocity, and Exemption Requirements.

§94.12. Findings and Inquiries.

§94.13. Alternate Licensing Requirements for Military Service Personnel.

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

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802629
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 487-3419

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40 TAC §94.1

STATUTORY AUTHORITY

The proposed rule is authorized by Texas Government Code §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation of, and provision of services by, the health and human services system, and §531.021, which provides HHSC with the authority to administer federal funds

and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Human Resources Code §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program; and Texas Health and Safety Code, Chapter 250, which requires DADS to maintain a Nurse Aide Registry.

The proposed rule implements Texas Government Code §531.0055 and §531.021; Texas Human Resources Code §32.021; and Texas Health and Safety Code, Chapter 250.

§94.1. Reference to Chapter 94.

In the Texas Administrative Code:

(1) a reference to this chapter is a reference to Title 26, Chapter 556 (relating to Nurse Aides); and

(2) a reference to a section in this chapter is a reference to the section in Title 26, Chapter 556 with the same number after the decimal (e.g., a reference to Title 40, §94.1 is a reference to Title 26, §556.1).

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

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802630
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 487-3419

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CHAPTER 95. MEDICATION AIDES--PROGRAM REQUIREMENTS

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS, codified in Title 40, Part 1, govern functions previously performed by DADS that have transferred to HHSC. To consolidate the rules of HHSC in one title of the Texas Administrative Code, some of the rules in Title 40, Part 1, will be repealed and new rules that are substantially the same will be adopted in Title 26, Part 1. If a chapter or section in Title 40 that is being repealed is still referenced in another rule under HHSC's authority, a new section will be adopted in Title 40 that provides a reference to the new chapter or section in Title 26. Therefore, as part of the consolidation, HHSC proposes the repeal of §§95.101, 95.103, 95.105, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, and 95.127 - 95.129; and new §95.1 in Chapter 95, Medication Aides--Program Requirements, of Title 40, Part 1.

BACKGROUND AND PURPOSE

The Texas Secretary of State created Title 26, Part 1 of the Texas Administrative Code to consolidate rules that govern functions of HHSC. These rules are currently in Titles 1, 25, and 40. As part of the consolidation into Title 26, HHSC proposes to repeal the rules in Title 40, Chapter 95. New rules in Title 26, Chapter 557, Medication Aides--Program Requirements, are proposed elsewhere in this issue of the *Texas Register* and are substantially the same as the rules proposed for repeal. In addition, HHSC proposes new §95.1, which explains that references in the Texas Administrative Code to Title 40, Chapter 95, or rules in Chapter 95, are references to Title 26, Chapter 557, or rules in Chapter 557.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§95.101, 95.103, 95.105, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, and 95.127 - 95.129 allows similar rules to be proposed as new rules in Title 26, Chapter 557.

Proposed new §95.1, Reference to Chapter 95, explains that references in the Texas Administrative Code to Title 40, Chapter 95, or sections in Chapter 95, are references to Title 26, Chapter 557, or sections in Chapter 557. This new section will be repealed when all references to Chapter 95 in rules under the authority of HHSC have been removed.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services,has determined that for each year of the first five years that the rules will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

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

(5) the proposed rules will create a new rule;

(6) the proposed rules will expand, limit, or repeal an existing rule;

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules proposed for repeal are substantially the same as the new rules being proposed in Title 26, Chapter 557.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT

Cecile Eriwn Young, Interim Executive Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be the consolidation of all HHSC rules in new Title 26, Part 1 of the Texas Administrative Code.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on DADS Chapter 95" in the subject line.

40 TAC §§95.101, 95.103, 95.105, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127 - 95.129

STATUTORY AUTHORITY

The repealed rules are authorized by Texas Government Code §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation of, and provision of services by, the health and human services system; Health and Safety Code §142.023, which authorizes the HHSC executive commissioner to establish standards for home health medication aides, and §242.608, which authorizes the HHSC executive commissioner to adopt rules regulating medication aides in nursing facilities; and Texas Human Resources Code §161.083, which authorizes the executive commissioner to establish minimum standards and requirements for the issuance of corrections medication aide permits.

The repealed rules implement Texas Government Code §531.0055; Texas Health and Safety Code §142.023 and §242.608; and Texas Human Resources Code §161.083.

§95.101. Introduction.
§95.103. Requirements for Administering Medications.
§95.105. Allowable and Prohibited Practices of a Medication Aide.
§95.107. Training Requirements; Nursing Graduates; Reciprocity.
§95.109. Application Procedures.
§95.111. Examination.
§95.113. Determination of Eligibility.
§95.115. Permit Renewal.
§95.117. Changes.
§95.119. Training Program Requirements.
§95.121. Permitting of Persons with Criminal Backgrounds.
§95.123. Violations, Complaints, and Disciplinary Actions.
§95.125. Requirements for Corrections Medication Aides.
§95.127. Application Processing.
§95.128. Home Health Medication Aides.
§95.129. Alternate Licensing Requirements for Military Service.

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

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802631
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 487-3419

♦ ♦ ♦

40 TAC §95.1

STATUTORY AUTHORITY

The proposed rule is authorized by Texas Government Code §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation of, and provision of services by, the health and human services system; Health and Safety Code §142.023, which authorizes the HHSC executive commissioner to establish standards for home health medication aides, and §242.608, which authorizes the HHSC executive commissioner to adopt rules regulating medication aides in nursing facilities; and Texas Human Resources Code §161.083, which authorizes the executive commissioner to establish minimum standards and requirements for the issuance of corrections medication aide permits.

The proposed rule implements Texas Government Code §531.0055; Texas Health and Safety Code §142.023 and §242.608; and Texas Human Resources Code §161.083.

§95.1. Reference to Chapter 95.

In the Texas Administrative Code:

(1) a reference to this chapter is a reference to Title 26, Chapter 557 (relating to Medication Aides--Program Requirements); and

(2) a reference to a section in this chapter is a reference to the section in Title 26, Chapter 557 with the same number after the decimal (e.g., a reference to Title 40, §95.1 is a reference to Title 26, §557.1).

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

Filed with the Office of the Secretary of State on June 14, 2018.

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Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 487-3419

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CHAPTER 99. DENIAL OR REFUSAL OF LICENSE

As required by Texas Government Code, §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. Rules of the former DADS, codified in Title 40, Part 1, govern functions previously performed by DADS that have transferred to HHSC. To consolidate the rules of HHSC in one title of the Texas Administrative Code, some of the rules in Title 40, Part 1, will be repealed and new rules that are substantially the same will be adopted in Title 26, Part 1. If a chapter or section in Title 40 that is being repealed is still referenced in another rule under HHSC's authority, a new section will be adopted in Title 40 that provides a reference to the new chapter or section in Title 26. Therefore, as part of the consolidation, HHSC proposes the repeal of §§99.1 - 99.4, and new §99.1 in Chapter 99, Denial or Refusal of License, of Title 40, Part 1.

BACKGROUND AND PURPOSE

The Texas Secretary of State created Title 26, Part 1 of the Texas Administrative Code to consolidate rules that govern functions of HHSC. These rules are currently in Titles 1, 25, and 40. As part of the consolidation into Title 26, HHSC proposes to repeal the rules in Title 40, Chapter 99. New rules in Title 26, Chapter 560, Denial or Refusal of License, are proposed elsewhere in this issue of the *Texas Register* and are substantially the same as the rules proposed for repeal. In addition, HHSC proposes new §99.1, which explains that references in the Texas Administrative Code to Title 40, Chapter 99, or sections in Chapter 99, are references to Title 26, Chapter 560, or sections in Chapter 560.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§99.1-99.4 allows similar rules to be proposed as new rules in Title 26, Chapter 560.

Proposed new §99.1, Reference to Chapter 99, explains that references in the Texas Administrative Code to Title 40, Chapter 99, or sections in Chapter 99, are references to Title 26, Chapter 560, or sections in Chapter 560. This new section will be repealed when all references to Chapter 99 in rules under the authority of HHSC have been removed.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the rules will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the rules as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;

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

(5) the proposed rules will create a new rule;

(6) the proposed rules will expand, limit, or repeal an existing rule;

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

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

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

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules proposed for repeal are substantially the same as the new rules being proposed in Title 26, Chapter 560.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT

Cecile Erwin Young, Interim Executive Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be the consolidation of all HHSC rules in new Title 26, Part 1 of the Texas Administrative Code.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on DADS Chapter 99" in the subject line.

40 TAC §§99.1 - 99.4

STATUTORY AUTHORITY

The repealed rules are authorized by Texas Government Code, §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation of, and provision of services by, the health and human services system; Texas Health and Safety Code, Chapters 142, 242, 247, 248A, and 252, which authorize HHSC to license and regulate home and community support service agencies, nursing facilities, assisted living facilities, pre-

scribed pediatric extended care centers, and intermediate care facilities for persons with an intellectual disability; and Texas Human Resources Code, Chapter 103, which authorizes HHSC to license and regulate day activity and health services facilities.

The repealed rules implement Texas Government Code, §531.0055; Texas Health and Safety Code, Chapters 142, 242, 247, 248A, and 252; and Texas Human Resources Code, Chapter 103.

§99.1. Definitions.

§99.2. Convictions Barring Licensure.

§99.3. Adverse Licensing Record.

§99.4. Registry Listings Barring Licensure.

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

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802633
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 487-3419

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40 TAC §99.1

STATUTORY AUTHORITY

The proposed rule is authorized by Texas Government Code, §531.0055, which requires the executive commissioner of HHSC to adopt rules for the operation of, and provision of services by, the health and human services system; Texas Health and Safety Code, Chapters 142, 242, 247, 248A, and 252, which authorize HHSC to license and regulate home and community support service agencies, nursing facilities, assisted living facilities, prescribed pediatric extended care centers, and intermediate care facilities for persons with an intellectual disability; and Texas Human Resources Code, Chapter 103, which authorizes HHSC to license and regulate day activity and health services facilities.

The proposed rule implements Texas Government Code, §531.0055; Texas Health and Safety Code, Chapters 142, 242, 247, 248A, and 252; and Texas Human Resources Code, Chapter 103.

§99.1. Reference to Chapter 99.

In the Texas Administrative Code:

(1) a reference to this chapter is a reference to Title 26, Chapter 560 (relating to Denial or Refusal of License); and

(2) a reference to a section in this chapter is a reference to the section in Title 26, Chapter 560 with the same number after the decimal (e.g., a reference to Title 40, §99.1 is a reference to Title 26, §560.1).

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

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802634
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 487-3419

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §215.85

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 215, Motor Vehicle Distribution, Subchapter C, Licenses, Generally, §215.85, Brokering, Used Motor Vehicles.

EXPLANATION OF PROPOSED AMENDMENTS

The purpose of the proposed amendments is to clarify how a licensed dealer may pay a referral fee.

Amendments add new subsection (d) to provide that a licensed dealer may pay a referral fee in cash or value to an individual who has purchased a vehicle from the licensed dealer within the five-year period preceding the referral. The payment of the referral fee may be contingent upon the new referred individual purchasing a vehicle from the license dealer, or a fee may be paid for the referral of a new potential customer.

Amendments add new subsection (e) to provide that the referral fees may not be offered or provided to an individual who is employed by the licensed dealer.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Corrie Thompson, Director of the Enforcement Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Ms. Thompson has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will clarify used motor vehicle referral fees. There are no anticipated economic costs for persons required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests 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 so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The department has determined that during the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. The proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on August 6, 2018.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, Chapter 503.002 which provides the board may adopt rules for the administration of Chapter 503.

§215.85. Brokering, Used Motor Vehicles.

(a) Transportation Code, §503.021 prohibits a person from engaging in business as a dealer, directly or indirectly, including by consignment without a GDN. Except as provided by this section, [~~The phrase~~] "directly or indirectly" includes the practice of arranging or offering to arrange a transaction involving the sale of a used motor vehicle for a fee, commission, or other valuable consideration. A person who is a bona fide employee of a dealer holding a GDN and acts for the dealer is not a broker for the purposes of this section.

(b) A buyer referral service, program, plan, club, or any other entity that accepts a fee for arranging a transaction involving the sale of a used motor vehicle is required to meet the requirements for and obtain a GDN, unless the referral service, program, plan, or club is operated in the following manner.

(1) There is no exclusive market area offered to a dealer by the program. All dealers are allowed to participate in the program on equal terms.

(2) Participation by a dealer in the program is not restricted by conditions, such as limiting the number of line-makes or discrimination by size of dealership or location. The total number of participants in the program may be restricted if the program is offered to all dealers at the same time, with no regard to the line-make.

(3) All participants pay the same fee for participation in the program. The program fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the dealer.

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of a motor vehicle or a trade-in.

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(c) All programs must comply with Subchapter H of this chapter (relating to Advertising).

(d) A licensed dealer may pay a referral fee in cash or value to an individual who has purchased a vehicle from the licensed dealer within the five-year period preceding the referral. The fee may be made contingent upon the new referred individual purchasing a vehicle from the licensed dealer, or a fee may be paid for the referral of a new potential purchaser.

(e) A referral fee under subsection (d) of this section may not be offered or provided to an individual who is employed by a licensed dealer.

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

Filed with the Office of the Secretary of State on June 14, 2018.

TRD-201802653
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: July 29, 2018
For further information, please call: (512) 465-5665

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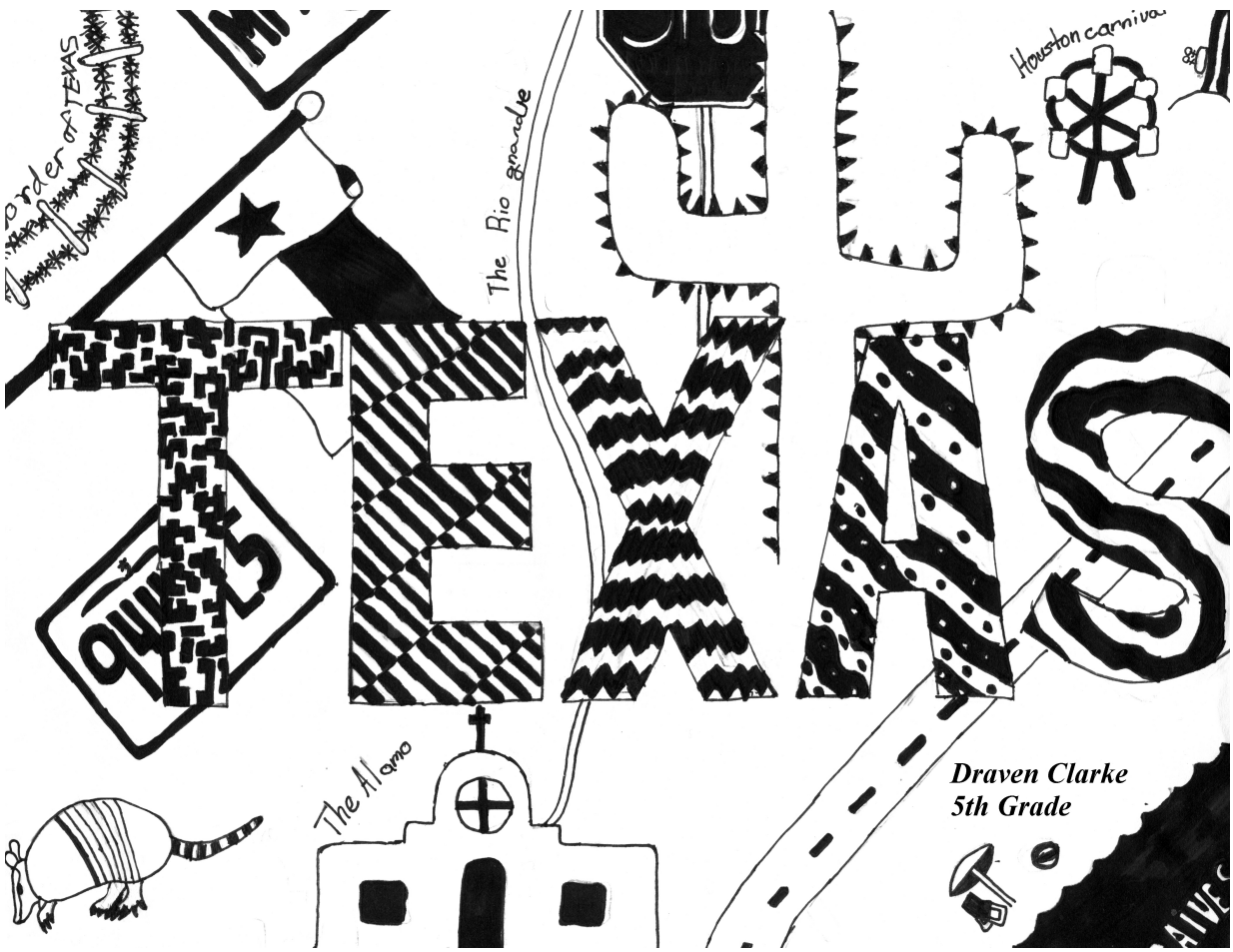
TEXAS
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The Alamo
Draven Clarke
5th Grade

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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 87. NOTARY PUBLIC

SUBCHAPTER A. NOTARY PUBLIC QUALIFICATIONS

1 TAC §§87.1 - 87.7

The Office of the Secretary of State withdraws the proposed repeal of §§87.1 - 87.7, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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

TRD-201802721
Lindsey Aston
General Counsel
Office of the Secretary of State
Effective date: June 18, 2018
For further information, please call: (512) 463-5590

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SUBCHAPTER B. REJECTION AND REVOCATION

1 TAC §87.10, §87.11

The Office of the Secretary of State withdraws the proposed repeal of §87.10 and §87.11, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5590

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SUBCHAPTER C. ADMINISTRATIVE ACTION

1 TAC §§87.20 - 87.26

The Office of the Secretary of State withdraws the proposed repeal of §§87.20 - §87.26, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5590

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SUBCHAPTER D. REFUSAL TO PERFORM NOTARIAL SERVICES

1 TAC §87.30

The Office of the Secretary of State withdraws the proposed repeal of §87.30, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted

by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5590

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SUBCHAPTER E. NOTARY RECORDS

1 TAC §§87.40 - 87.44

The Office of the Secretary of State withdraws the proposed repeal of §§87.40 - 87.44, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5590

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SUBCHAPTER F. CHANGE IN ADDRESS

1 TAC §87.50

The Office of the Secretary of State withdraws the proposed repeal of §87.50, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5590

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SUBCHAPTER G. ELECTRONIC SUBMISSIONS OF NOTARY APPLICATIONS AND BONDS

1 TAC §§87.60 - 87.62

The Office of the Secretary of State withdraws the proposed repeal of §§87.60 - 87.62, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
General Counsel
Office of the Secretary of State
Effective date: June 18, 2018
For further information, please call: (512) 463-5590

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SUBCHAPTER H. APPOINTMENT OF QUALIFIED ESCROW OFFICER AS NOTARY PUBLIC

1 TAC §87.70

The Office of the Secretary of State withdraws the proposed repeal of §87.70, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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TRD-201802728

Lindsey Aston
General Counsel
Office of the Secretary of State
Effective date: June 18, 2018
For further information, please call: (512) 463-5590

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SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§87.1 - 87.4

The Office of the Secretary of State withdraws proposed new §§87.1 - 87.4, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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TRD-201802729
Lindsey Aston
General Counsel
Office of the Secretary of State
Effective date: June 18, 2018
For further information, please call: (512) 463-5590

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SUBCHAPTER B. ELIGIBILITY AND QUALIFICATION

1 TAC §§87.10 - 87.15

The Office of the Secretary of State withdraws proposed new §§87.10 - 87.15, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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

TRD-201802730
Lindsey Aston
General Counsel
Office of the Secretary of State
Effective date: June 18, 2018
For further information, please call: (512) 463-5590

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SUBCHAPTER C. NOTARIES WITHOUT BOND

1 TAC §§87.20 - 87.22

The Office of the Secretary of State withdraws proposed new §§87.20 - 87.22, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
General Counsel
Office of the Secretary of State
Effective date: June 18, 2018
For further information, please call: (512) 463-5590

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SUBCHAPTER D. ADMINISTRATIVE ACTION

1 TAC §§87.30 - 87.35

The Office of the Secretary of State withdraws proposed new §§87.30 - 87.35, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
General Counsel
Office of the Secretary of State
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For further information, please call: (512) 463-5590

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SUBCHAPTER E. NOTARY PROCEDURES

1 TAC §§87.40 - 87.44

The Office of the Secretary of State withdraws proposed new §§87.40 - 87.44, concerning the notaries public. The proposal,

which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Effective date: June 18, 2018
For further information, please call: (512) 463-5590

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SUBCHAPTER F. NOTARY RECORDS

1 TAC §§87.50 - 87.54

The Office of the Secretary of State withdraws proposed new §§87.50 - 87.54, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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

TRD-201802734
Lindsey Aston
General Counsel
Office of the Secretary of State
Effective date: June 18, 2018
For further information, please call: (512) 463-5590

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SUBCHAPTER G. CHANGES AFTER COMMISSIONING

1 TAC §§87.60 - 87.63

The Office of the Secretary of State withdraws proposed new §§87.60 - 87.63, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
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SUBCHAPTER H. MINIMUM REQUIREMENTS FOR ONLINE NOTARIZATIONS

1 TAC §87.70, §87.71

The Office of the Secretary of State withdraws proposed new §87.70 and §87.71, concerning the notaries public. The proposal, which was published in May 4, 2018, issue of the *Texas Register* (43 TexReg 2665), would have replaced the current language to reorganize the chapter, update outdated language, and to conform to the statutory revisions to the Government Code enacted by the 85th Texas Legislature, Regular Session, in House Bill 1217, effective July 1, 2018.

Due to the number and nature of comments received, substantive changes have been made to the rules. As a result, a repeal and replacement of Chapter 87 is published in the proposed rules section of this issue to replace the withdrawn repeal and replacement.

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Lindsey Aston
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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §§57.48 - 57.52

Proposed amended §§57.48 - 57.52, published in the December 15, 2017, issue of the *Texas Register* (42 TexReg 7115), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on June 18, 2018.

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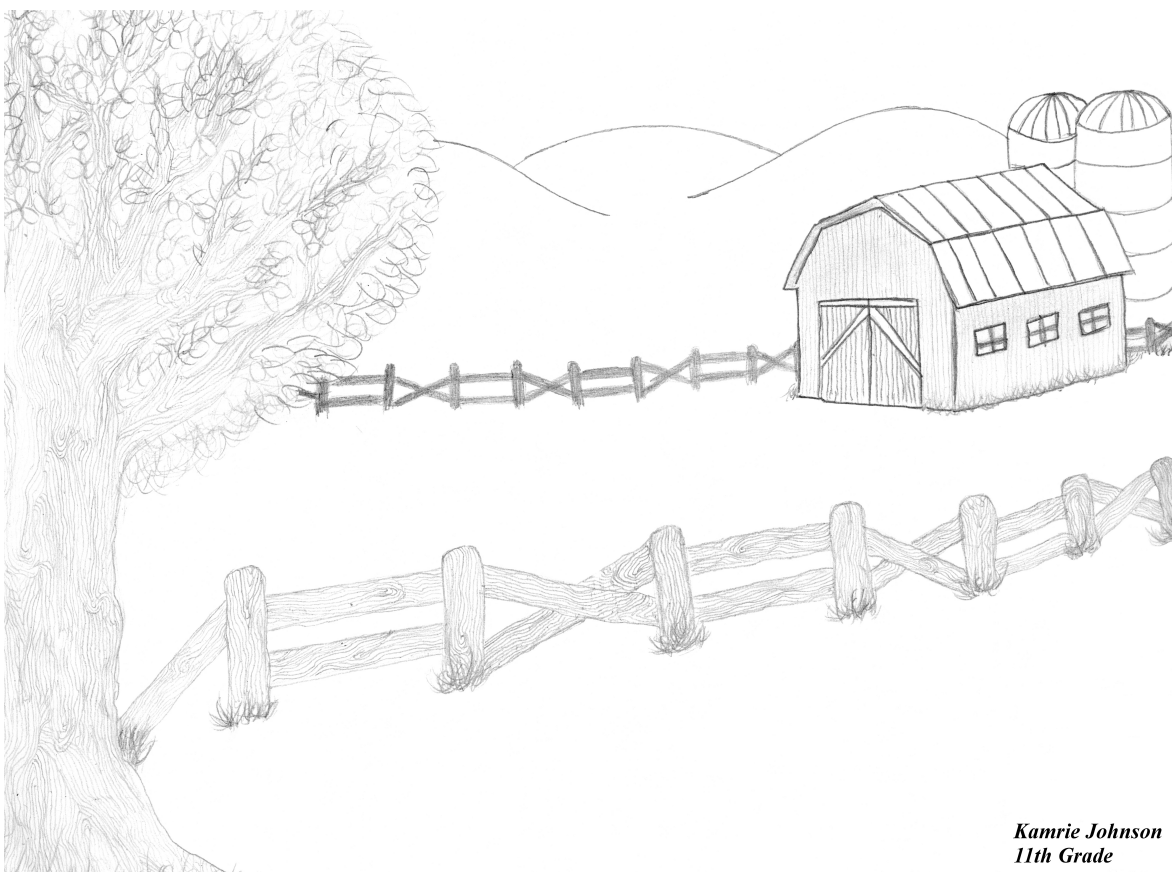

Kamrie Johnson
11th Grade

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 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 3. STATE BANK REGULATION

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC §3.4, concerning foreign banking; §3.23, concerning exercise of trust powers; §3.36, concerning annual assessments and specialty examination fees; §3.43, concerning credit balance of funds; §3.44, concerning statements of registration, notices and filings related to foreign bank representative offices; §3.52, concerning general definitions; §3.55, concerning calculation of liabilities; and §3.92, concerning user safety at unmanned teller machines. The amendments are adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2683). The amended rules will not be republished.

The amended rules remove transitionary provisions that are no longer necessary and correct statutory references and certain scrivener errors.

Section 3.4 cites to 12 U.S.C. §1831 to incorporate the federal definition of "well capitalized." Section 3.4 as amended corrects the statutory reference for the federal definition to 12 U.S.C. §1831o.

Section 3.23 references the filing fee required by §15.2 of this title. Section 3.23 as amended corrects the reference to include the correct title of the section.

Section 3.36 includes a transitionary provision regarding annual assessments established for the fiscal year beginning September 1, 2015. Section 3.36 as amended removes the transitionary provision.

Section 3.43 references §204.104(b), of the Texas Finance Code to control the authorized sources of deposits for foreign bank branches or agencies. Section 3.43 as amended corrects the reference to include the correct section of the Texas Finance Code.

Section 3.44 references the filing fee required by §15.2 of this title. Section 3.44 as amended corrects the reference to include the correct title of the section.

Section 3.52 references the Federal Financial Examination Council. Section 3.52 as amended corrects the reference to include the correct abbreviation of the entity.

Section 3.55 references the Federal Financial Examination Council. Section 3.55 as amended corrects the reference to include the correct abbreviation of the entity.

Section 3.92 describes the conditions for measuring compliance with the standards for lighting at unmanned teller machines. Section 3.92 as amended corrects a misspelling of the unit of measurement.

The department received no comments regarding the proposed amendments.

SUBCHAPTER A. SECURITIES ACTIVITIES AND SUBSIDIARIES

7 TAC §3.4

The amendment to §3.4 is adopted under Finance Code, §31.003(a), which provides that the commission may adopt rules to accomplish the purposes of Title 3, Subtitle A and Chapters 11, 12, and 13 of the Texas Finance Code, including rules necessary or reasonable to:

(1) Implement and clarify this subtitle and Chapters 11, 12, and 13;

(2) Preserve or protect the safety and soundness of state banks;

(3) Grant at least the same rights and privileges to state banks that are or may be granted to national banks domiciled in this state;

(4) Recover the cost of maintaining and operating the department and the cost of enforcing this subtitle and other applicable law by imposing and collecting ratable and equitable fees for notices, applications, and examinations; and

(5) Facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance 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 June 15, 2018.

TRD-201802660
Catherine Reyer
General Counsel
Finance Commission of Texas
Effective date: July 5, 2018
Proposal publication date: May 4, 2018
For further information, please call: (512) 475-1301

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SUBCHAPTER B. GENERAL

7 TAC §3.23, §3.36

The amendment to §3.23 is adopted under Finance Code, §31.003(a)(2), which authorizes the commission to adopt rules

necessary or reasonable to preserve or protect the safety and soundness of state banks. The amendment to §3.36 is adopted under Finance Code, §31.003(a)(4) and §31.106, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting ratable and equitable fees.

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

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Catherine Reyer
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Finance Commission of Texas
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For further information, please call: (512) 475-1301

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SUBCHAPTER C. FOREIGN BANK BRANCHES, AGENCIES AND REPRESENTATIVE OFFICES

7 TAC §3.43, §3.44

The amendments to §3.43 and §3.44 are adopted under Finance Code, §31.003(a), which provides that the commission may adopt rules to accomplish the purposes of Title 3, Subtitle A and Chapters 11, 12, and 13 of the Texas Finance Code, including rules necessary or reasonable to:

(1) Implement and clarify this subtitle and Chapters 11, 12, and 13;

(2) Preserve or protect the safety and soundness of state banks;

(3) Grant at least the same rights and privileges to state banks that are or may be granted to national banks domiciled in this state;

(4) Recover the cost of maintaining and operating the department and the cost of enforcing this subtitle and other applicable law by imposing and collecting ratable and equitable fees for notices, applications, and examinations; and

(5) Facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance 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.

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Catherine Reyer
General Counsel
Finance Commission of Texas
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For further information, please call: (512) 475-1301

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SUBCHAPTER D. PLEDGE AND MAINTENANCE OF ASSETS BY FOREIGN BANK LICENSED TO MAINTAIN TEXAS STATE BRANCH OR AGENCY

7 TAC §3.52, §3.55

The amendments to §3.52 and §3.55 are adopted under Finance Code, §201.003, which authorizes the commission to adopt rules necessary or reasonable to implement and clarify Title 3, Subtitle G of the Finance Code and Finance Code, §204.113 and §204.114, which authorize the commission to adopt rules concerning asset pledge and maintenance requirements applicable to a foreign bank that maintains a Texas state branch or agency.

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 June 15, 2018.

TRD-201802664
Catherine Reyer
General Counsel
Finance Commission of Texas
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For further information, please call: (512) 475-1301

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SUBCHAPTER E. BANKING HOUSE AND OTHER FACILITIES

7 TAC §3.92

The amendments to §3.92 are adopted under Finance Code, §59.310, which authorizes the commission to adopt rules to implement Subchapter D of the Finance Code, Chapter 59 (§§59.301 - 59.310).

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 June 15, 2018.

TRD-201802666
Catherine Reyer
General Counsel
Finance Commission of Texas
Effective date: July 5, 2018
Proposal publication date: May 4, 2018
For further information, please call: (512) 475-1301

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.23, 33.31, 33.35, 33.51

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to 7 TAC §33.23, concerning additional provisions that apply to permissible investments; §33.31, concerning record retention relating to currency exchange transactions; §33.35, concerning record retention relating to money transmission transactions; and §33.51, concerning providing information to customers on how to file a complaint. The amendments are adopted without changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2686). The amended rule will not be republished.

Section 33.23 discusses the permissible investment requirement for a money transmitter under §151.309 of the Texas Finance Code. Section 33.23 as amended clarifies the department's interpretation of an existing permissible investment under the statute to allow a money transmitter to include the appropriate assets in meeting its statutory requirements.

Section 33.31 explains what records a currency exchanger must retain with respect to a currency exchange transaction. Section 33.31 as amended clarifies the documentation an alien may use to provide customer information. This change mirrors the federal requirements as clarified in FINCEN Ruling FIN-2014-R003.

Section 33.35 pertains to record retention requirements relating to money transmission transactions. Section 33.35 as amended includes a reference to digital wallets as a stored value product and removes a provision that refers to to-be-adopted federal rules that were subsequently adopted. The change in subsection (d)(1) does not expand the existing regulation, it merely clarifies the department's interpretation of digital wallets/e-wallets as "stored value products." Subsection (d)(3) is being deleted because the Department of Treasury adopted specific recordkeeping requirements for stored value transactions subsequent to the adoption of §33.35 of this title.

Section 33.51 addresses when and how a money services business must provide customers with the information necessary to file a complaint with the department. Section 33.51 as amended clarifies when a money services business license holder is required to include the consumer complaint notice on its website.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Texas Finance Code, Chapter 151.

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 June 15, 2018.

TRD-201802658
Catherine Reyer
General Counsel
Texas Department of Banking
Effective date: July 5, 2018
Proposal publication date: May 4, 2018
For further information, please call: (512) 475-1301

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1029

The Texas Education Agency adopts an amendment to §129.1029, concerning the optional flexible year program (OFYP). The amendment is adopted without changes to the proposed text as published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1931) and will not be republished. The adopted amendment updates the rule to reflect statutory changes resulting from House Bill (HB) 1842, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. HB 1842, 84th Texas Legislature, 2015, established districts of innovation. The adopted amendment to 19 TAC §129.1029, Optional Flexible Year Program, addresses a conflict with statute for districts of innovation in Texas Education Code (TEC), §12A.004, and the OFYP in TEC, §29.0821(c). Educators employed at school districts operating an OFYP are required to provide a minimum of 187 days of service under TEC, §21.401(b), even though districts of innovation are exempt from this requirement.

To address the conflict, the adopted amendment to 19 TAC §129.1029(c)(6) deletes language referencing TEC, §21.401(b), and includes language that more accurately reflects the legislative intent to ensure that additional educator resources are available on OFYP days and provided to students who need help.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began March 30, 2018, and ended April 30, 2018. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12A.004, which no longer lists TEC, §21.401(b), as an impermissible exemption. TEC, §21.401(b), requires an educator employed under a 10-month contract to provide a minimum of 187 days of service; TEC, §29.0821(c), which requires that an educator employed under a 10-month contract must provide the minimum days of service required under TEC, §21.401; TEC, §29.0821(d), which allows a school district to require educational support personnel to provide service as necessary for an optional flexible year program; and TEC, §29.0821(e), which allows the commissioner to adopt rules for the administration of the optional flexible year program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12A.004 and §29.0821.

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 June 18, 2018.

TRD-201802715
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 8, 2018
Proposal publication date: March 30, 2018
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 170. PAIN MANAGEMENT SUBCHAPTER B. UTILIZATION OF OPIOID ANTAGONISTS

22 TAC §§170.4 - 170.8

The Texas Medical Board adopts new Subchapter B, §§170.4-170.8, concerning Utilization of Opioid Antagonists. Sections 170.4 - 170.6 are adopted with changes to the proposed text as published in the February 9, 2018, issue of the *Texas Register* (43 TexReg 705). The text of the rules will be republished. Sections 170. 7 and 170.8 are adopted without changes to the proposed text as published in the February 9, 2018, issue of the *Texas Register* (43 TexReg 705) and will not be republished.

The Board sought stakeholder input through the Enforcement Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on November 16, 2017. The comments were incorporated into the proposed rules. Changes in the published rule, summarized below, respond to public comments or otherwise reflect non-substantive variations from the published rule. General Counsel Scott Freshour advises that the changes in the rules affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will not be more burdensome than under the proposed rules as published.

The Board received written comments from the Texas Pain Society (TPS), the Texas Medical Association (TMA), and individual who is a political consultant for the Texas School Nurses Organization, and an individual licensed Texas physician.

New §170.4, concerning Purpose, describes the legislature's recognition of the importance of preventing opioid overdose death through the use of opioid antagonists. This section further describes the purposes of Subchapter B as establishing guidelines for the prescription of opioid antagonists, identifying individuals at risk of opioids, and clarifying liability issues for physicians who prescribe opioid antagonists with good faith and reasonable care.

The Board received written comments from the Texas Pain Society (TPS).

Comment: The TPS proposed a grammatical correction adding the word "for" to the sentence "This subchapter establishes guidelines the prescription of opioid antagonists..."

Board Response: The Board agrees with the TPS comment and is inserting the word "for" to the sentence.

New §170.5, concerning Definitions, sets the definitions for "Prescriber," "Opioid antagonist," and "Opioid-related drug overdose."

The Board received comments from the Texas Medical Association (TMA) and the Texas Pain Society (TPS).

Comment One: The TMA comments that introductory sentence to §170.5 should be revised to replace the such replacing the citation to §483.101 with the full citation "Texas Health and Safety Code §483.101." The TMA further comments that TMB incorrectly used the term "opioid prescriber" rather than "prescriber" in the introductory sentence, as well as failing to include "opioid related drug-overdose," which is included in the definitions. The TMA further comments that the definition for prescriber in §170.5(2) be deleted and therefore "prescriber" should also be deleted from the introductory sentence. The TMA argues that the definition of "prescriber," taken from Texas Health and Safety Code §483.101, is too broad in scope and encompasses some prescribers who are outside the regulatory authority of the TMB. TMA argues that the legislature intended that the Board draft prescribing guidelines only for physicians by placing the requirement for guidelines regarding prescribing of opioid antagonists in the Medical Practice Act. TMA also comments that the legislature "did not expressly expand the TMB's authority to develop guidelines for prescribers other than physicians."

Board Response. The Board agrees that the full citation for Texas Health and Safety Code §483.101 would be helpful to the public and amends the rule to include the full citation. The Board also agrees that the use of the term "opioid prescriber" was made in error and is deleting the word "opioid" from the definition "opioid prescriber." The TMB disagrees that with the TMA that the definition of "prescriber should be deleted. Texas Health and Safety Code §483.101(4) recognizes that a "prescriber" is any person "authorized by law to prescribe opioid antagonists." Physicians may delegate the prescription of opioid antagonists to physician assistants and advanced practice registered nurses pursuant to Texas Occupations code §157.0511 and §157.0512 and §193.6 of this title (relating to Delegation of Prescribing and Ordering Drugs and Devices). The legislature was aware of this when it promulgated Texas Occupation Code §170.002 requiring the Board to promulgate guidelines for the opioid antagonists. The Board notes that the language of §170.002 does not specify that the guidelines be limited to physicians, indicating the legislature's intent that the Board draft a uniform set of guidelines to apply to both physicians and mid-levels delegated prescriptive authority by physicians. Further, the legislature has already authorized the TMB to regulate delegation of prescribing to physician assistants and advanced registered practice nurses in Chapter 157 of the Medical Practice Act. The Board declines to accept TMA's suggestion and will retain the definition of "prescriber."

Comment Two: The TPS comments that the current definition of "opioid antagonist." §170.5(2), should be narrowed to include only Naloxone. TPS pointed out that the current definition, as written, this includes over 100 opioid-antagonist medications, out of which, Naloxone is the only medication used to treat opioid overdose. The TPS further comments that the definition of "opioid related drug overdose." §170.5(3), be amended to also include the language, "or dilation of the pupils," because when people stop breathing and become hypoxic during an opioid overdose their pupils dilate.

Board Response. The Board agrees with the TPS that the rule as drafted is overbroad and that the legislature's intention in drafting Chapter 483 of the Texas Health and Safety Code and Chapter 170 of the Texas Occupations Code was to address use of opioid antagonists to prevent opioid related drug overdoses. As Naloxone is the only opioid antagonist used to treat opioid overdose, the definition of opioid antagonist is modified to read, "Naloxone, a drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors." The Board also agrees with TPS that the definition of opioid related drug overdose be modified to include the phrase, "or dilation of pupils" to cover situations where individuals suffering drug overdoses become hypoxic.

New §170.6, concerning Opioid Antagonist Prescription Guidelines, sets out the guidelines describing the individuals to whom opioid antagonists may be prescribed, as additional guidelines identifying individuals at risk of an opioid overdose.

The Board received comments from the Texas Medical Association (TMA) and the Texas Pain Society (TPS) and Paul Carlton, MD.

Comment One: TMA. TMA comments that the introductory sentence should be modified by replacing the term "prescriber" with the term "physician." This comment is consistent with TMA's comments regarding §170.5(2). TMA comments on §170.6(a) that the term "prescriber" should be replaced with the term "physician." TMA comments on §170.6(a)(2) that Occupations Code §170.002 requires does not require guidelines to address prescribing an opioid antagonist to a patient at risk of experiencing an opioid-related drug overdose based on prescribing by other prescribers, but merely requires the guidelines to address at-risk patients. TMA comments on §170.6(a)(4) that "person" should be modified to "persons" to be grammatically correct. TMA comments on §170.6(b)(1) that "persons being prescribed high doses of opioids for long term management of chronic pain" be broadened to address first-time users of opioids and the full range of opioid users who may appropriately be considered candidates for an opioid antagonist. TMA suggests that this broadening be accomplished by deleting the terms "high doses" and "for long term management of chronic pain."

Board Response to TMA Comment: The Board has already responded to the TMA's suggestion that the term "prescriber" be replaced by "physician," and reject this suggestion for the reasons articulated above. The Board disagrees with TMA's comment regarding §170.6(a)(2). The language regarding other prescribers is intended to make clear that a physician, such as a primary care physician for a patient, may prescribe an opioid antagonist to a patient even though the primary care physician is not prescribing opioids to the patient, but is aware that another physician, perhaps a pain management specialist is doing such prescribing. The TMA's objection that the guidelines are limited to prescribing to at-risk patients somehow implies that patients being prescribed opioids by another prescriber are somehow not contained within the universe of "at-risk" patients. Accordingly, the board rejects the suggested modification. The Board agrees with the TMA's comment that §170.6(a)(4) should be modified by changing "person" to "persons" and amends the rule accordingly. The Board also agrees with the TMA that the guideline for individuals at risk of opioid related drug overdoses in §170.6(b)(1) should be broadened by eliminating the phrases "high doses" (of opioids) and "for long term management of chronic pain," and deletes these phrases accordingly. By making this change the rule addresses the full range of opioid users who may be at risk, including first-time users of opioids.

Comment Two: TPS. The TPS comments on §170.6(a) that the term "standing order" is not defined in §170.6(a) as it relates to the writing of prescriptions and dispensing of Naloxone, nor is standing order defined in Texas Occupations Code §157 related to delegation of prescriptive authority. TPS suggests that a new definition that defines the process for writing and dispensing the standing orders of Naloxone be promulgated co-jointly between the Texas Medical Board and the Texas Pharmacy Board. TPS further comments as to §170.6(b)(1) the terms "high dose" and "long term management of chronic pain" be removed. TPS comments that "high dose" of opioids is not defined and a dosage that is not otherwise high becomes so when taken in a higher than prescribed amount along with alcohol. TPS also comments that patients being treated for chronic pain are rarely at risk for an opioid overdose. The TPS suggestion removing the terms "high doses" and "for long term management of chronic pain." The TPS also comments as to §170.6(b) that a large percentage of opioid deaths involve illicit opioids and compounds such as Fentanyl that were not obtained by prescription. The TPS suggests addressing this category of overdoses by adding §170.6(b)(9), "persons who use illicit opioids and/or non prescribed opioids."

Board Response to TPS Comment: The Board disagrees with the TPS comment that "standing order" be defined co-jointly with the Texas Pharmacy Board. The Board notes that the legislature in drafting Chapter 157, relating to delegation of prescriptive authority chose not to specifically define standing orders and also did request the Board to promulgate rules defining minimum requirements for standing orders. Additionally, the legislature did not include a charge in Texas Occupations Code §170.002 for the Board to define minimum requirements for standing orders. Accordingly, the Board declines to amend the language of §170.6(a) to include a definition for standing order. The Board agrees with TPS's comment on §170.6(b)(1) and is deleting the phrases "high doses" and "for long term management of chronic pain." The Board also agrees with TPS's comment that a large percentage of overdose death are due to illicit use of opioids and/or non-prescribed opioids, and according amends §170.6 to include a new subsection (b)(9), "Persons who use illicit opioids and/or non prescribed opioids."

Comment Three: An individual recommends that §170.6(a)(3) be amended. This individual specifically requests that the phrase "or other person in a position to assist a person at risk for an opioid-related drug overdose" to read "or other leaders in places of large public gathering, including, but not limited to churches, sporting arenas gymnasiums, schools, restaurants, and community centers in a position to assist a person at risk for an opioid-related drug overdose."

Board Response: The Board appreciates that leaders in places of large public gatherings are often in a position to assist a person at risk for an opioid-related drug overdose, but believes that the current language of §170.6(a)(3), which is based on Texas Health and Safety Code §483.103, better reflects the intent of the legislature. Although the Board specifically included law enforcement officers as a separate category of individuals to whom opioid antagonists may be prescribed, this inclusion was based largely on an Attorney General ruling which clarified the legislature's intent to authorize law enforcement officers to be prescribed opioid antagonists to be administered to persons suffering opioid-related drug overdoses.

Comment Four: An individual on behalf of the Texas School Nurses Organization (TSNO). This individual commented that he and the TSNO are concerned that the rule might cause confusion and endanger current practices of physicians prescribing opioid antagonists to school nurses through standing orders. This individual requests that the Board expressly include school nurses in §170.6(a) as persons who may be prescribed an opioid antagonist.

Board Response to individual/TSNO Comment: The Board believes that §170.6(a)(3) which authorizes prescription of opioid antagonists to persons in a position to assist a person at risk for an opioid-related drug overdose is adequate to address the issue of school nurses being prescribed opioid antagonists and is consistent with legislative intent, as this language was modeled on the language from Texas Health and Safety Code 483.103.

New §170.7, concerning Liability for Act or Omission with Respect to Prescribing an Opioid Antagonist, makes clear prescribers acting in good faith and in accordance with the standard of care will not be subject to civil or criminal liability, or licensure disciplinary action for prescribing or failing to prescribe an opioid antagonist, or an outcome resulting from the eventual administration of a prescription of an opioid antagonist.

The Board received a comment from the Texas Medical Association.

Comment: TMA. The TMA commented that the use of the term "prescriber" be replaced with the term "physician." For the reasons discussed above, the Board declines to make this change.

New §170.8, relating to Documentation, set forth the requirement that prescribers prescribing opioid antagonists shall document the prescription in the medical record of the person at risk of an opioid overdose.

The Board received comments on §170.8 from the TMA.

Comment: TMA. The TMA comments that documentation requirements of §170.8 are unclear and queries whether a physician is required to place the documentation for the description of the opioid antagonist in the medical record of the patient whom the physician is seeing, or to create a medical record for a patient for whom the physician is not seeing, for example, a family member.

Response: The Board believes that the language of the rule is clear that documentation is to be place in the medical file of the patient at risk for the opioid overdose. If the prescription or standing order is to be made to a law enforcement officers or a group like school nurses, it should be maintained in a stand-alone file in the physician's office.

The new rules are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The new rules are also adopted under the authority of §170.002 of the Texas Occupations Code.

§170.4. Purpose.

The legislature has recognized the importance of preventing opioid-related overdose death through the ready availability of opioid antagonists. This subchapter establishes guidelines for the prescription of opioid antagonists and for identifying persons at risk of an opioid-related overdose, while clarifying liability issues for physicians who prescribe opioid antagonists in good faith and with reasonable care.

§170.5. Definitions.

Pursuant to Texas Occupations Code §170.001, the definitions for "opioid antagonist" and "prescriber," and opioid-related drug overdose have the meanings assigned by Texas Health and Safety Code §483.101, as set out in paragraphs (1) - (3) of this section.

(1) Prescriber--a person authorized by law to prescribe an opioid antagonist.

(2) Opioid antagonist--Naloxone, a drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors.

(3) Opioid-related drug overdose--a condition, evidenced by symptoms such as extreme physical illness, decreased level of consciousness, constriction of the pupils or dilation of the pupils, respiratory depression, or coma, that a layperson would reasonably believe to be the result of the consumption or use of an opioid.

§170.6. Opioid Antagonist Prescription Guidelines.

(a) A prescriber may directly or by standing order prescribe an opioid antagonist to:

(1) a patient to whom an opioid medication is also prescribed who is at risk for an opioid-related drug overdose;

(2) a patient at risk of experiencing an opioid-related drug overdose based on prescribing by other providers;

(3) a family member, friend, or other person in a position to assist a person at risk for an opioid-related drug overdose;

(4) law enforcement agencies in a position to assist persons experiencing an opioid related drug overdose.

(b) Persons at Risk of Opioid Related Drug Overdoses. The following guidelines may be used in identifying persons at risk of opioid related drug overdose and thus appropriate candidate for prescription of opioid antagonists. These guidelines include, but are not limited to:

(1) persons being prescribed opioids;

(2) persons receiving rotating opioid medication regimens and are thus at risk for incomplete cross-tolerance;

(3) persons who have a history of prior opioid-drug intoxication or overdose;

(4) persons with a legitimate need for analgesia, coupled with a suspected or confirmed history of substance abuse, dependence, or non-medical use of prescription or illicit opioids;

(5) persons on extended release/long acting opioid medications that may increase risk for opioid overdose;

(6) persons who have ever completed a mandatory opioid detoxification or abstinence programs;

(7) persons recently released from incarceration with a history of past opioid use or abuse;

(8) persons resuming opioid therapy after an interruption of opioid treatment; and

(9) Persons who use illicit opioids and/or non prescribed opioids.

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 June 18, 2018.

TRD-201802712
Stephen "Brent" Carlton, J.D.
Executive Director
Texas Medical Board
Effective date: July 8, 2018
Proposal publication date: February 9, 2018
For further information, please call: (512) 305-7016

CHAPTER 187. PROCEDURAL RULES
SUBCHAPTER H. IMPOSITION OF ADMINISTRATIVE PENALTY

22 TAC §187.78

The Texas Medical Board (Board) adopts an amendment to §187.78, concerning Written Response, without changes to the proposed text as published in the February 16, 2018, issue of the *Texas Register* (43 TexReg 822) and will not be republished.

The amendment removes the undefined term "informal meeting" and replaces it with "ISC," which is defined in §187.2 of this chapter (relating to Definitions).

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 June 18, 2018.

TRD-201802710
Stephen "Brent" Carlton, J.D.
Executive Director
Texas Medical Board
Effective date: July 8, 2018
Proposal publication date: February 16, 2018
For further information, please call: (512) 305-7016

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.3

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §461.3, Former Board Members without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2119) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary because the agency no longer has the resources needed to administer the oral examination.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802682
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.6

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §463.6, Regionally Accredited Institutions, without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2120) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to update changes in the regional accrediting organizations recognized as providing accreditation to universities throughout the U.S. The adopted change is necessary because the North Central Association of Colleges and Schools, also known as the North Central Association, was dissolved in 2014, and the Higher Learning Commission acquired the assets of the association some time thereafter. Additionally, the Middle States Commission on Higher Education, while associated with the Middle States Association of Colleges and Schools, is the entity responsible for accreditation for institutions of higher education; the Middle States Association of Colleges and Schools is responsible for accreditation of elementary and secondary schools.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802683
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.12

The Texas State Board of Examiners of Psychologists adopts the repeal of rule §463.12, concerning Licensed Psychologist by Reciprocity, without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2121). The repeal will not be republished.

The repeal is being adopted to ensure the protection and safety of the public. The repeal as adopted is necessary to ensure the Board achieves maximum efficiency and licensure mobility when exploring reciprocity with other jurisdictions. The adopted repeal is also necessary to ensure an equal opportunity for reciprocity among the various types of licensure issued by this agency.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802684
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.12

The Texas State Board of Examiners of Psychologists adopts a new rule §463.12, concerning Licensure by Reciprocity, without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2122). The new rule will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is necessary to ensure the Board achieves maximum efficiency and licensure mobility when exploring reciprocity with other jurisdictions. The adopted new rule is also necessary to ensure an equal opportunity for reciprocity among the various types of licensure issued by this agency.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802685
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.18

The Texas State Board of Examiners of Psychologists adopts amendments to rule §463.18, Failing Written Examinations without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2124) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments as adopted are necessary because the agency has repealed former Board rule §463.15, Oral Examination. The adopted amendment makes conforming changes by deleting any references to the former oral examination rule.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802686
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.19

The Texas State Board of Examiners of Psychologists adopts amendments to rule §463.19, Time Limit on Examination Failures and Passing Scores without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2125) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments as adopted are necessary because the agency has repealed former Board rule 463.15, Oral Examination. The adopted amendment makes conforming changes by deleting any references to the former oral examination rule.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802687
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.20

The Texas State Board of Examiners of Psychologists adopts amendments to rule §463.20, Refunds and Transfer of Application and Examination Fees without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2126) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments as adopted are necessary because the agency has repealed former Board rule 463.15, Oral Examination. The adopted amendments make conforming changes by deleting any references to the former oral examination rule.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802688
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.21

The Texas State Board of Examiners of Psychologists adopts amendments to rule §463.21, Board Members as Reviewers of Examination without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2127) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments as adopted are necessary because the agency has repealed former Board rule 463.15, Oral Examination. The adopted amendments make conforming changes by deleting any references to the former oral examination rule.

No comments were received regarding the adoption of the amendment.

The amendments are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802690
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.23

The Texas State Board of Examiners of Psychologists adopts amendment to rule §463.23, Criteria for Examination Consultants without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2128) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary because the agency has repealed former Board rule 463.15, Oral Examination. The adopted amendment makes conforming changes by deleting any references to the former oral examination rule.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802691
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §463.24

The Texas State Board of Examiners of Psychologists adopts the repeal of rule §463.24, concerning Oral Examination Work Group, without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2129). The repeal will not be republished.

The repeal is being adopted to ensure the protection and safety of the public. The repeal as adopted is necessary because the agency has repealed form Board rule 463.15, Oral Examination. The adopted repeal makes conforming changes by deleting any references to the form oral examination rule, thus the oral examination working group is no long needed.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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TRD-201802692
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §465.1, concerning Definitions, without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2130). The amended text will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The adopted amendment is necessary to eliminate the duplicative definition of "multiple relationship." The adopted amendment is also necessary to bring the agency's definition of "professional relationship" into alignment with the U.S. 5th Cir. Court of Appeals opinion in Serafine vs. Branaman. More specifically, the Court opined that with regard to professional speech, "outside of the fiduciary relationship between client and therapist, speech is granted ordinary First Amendment protection." The adopted amendment seeks to clarify that a professional relationship is a fiduciary relationship, and one where the patient or client, at a minimum, reasonably believes his or her treatment provider is subject to Chapter 611 of the Health and Safety Code. These two factors help ensure that protected speech enjoys the full benefit of Section 501.003(c) of the Occupations Code, while speech constituting the practice of psychology remains subject to this agency's jurisdiction.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802694
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §465.13

The Texas State Board of Examiners of Psychologists adopts amendment to rule §465.13, Personal Problems, Conflicts and Dual Relationships without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2133). The amended rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is brought to clarify the standards for licensees confronted with multiple relationships and to eliminate duplicate or confusing language. The adoption amendment is also being offered to provide a more balanced approached by requiring the likelihood of certain harms before prohibitions in the rule are triggered, as opposed to the mere potential for such harm.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802695
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §465.18

The Texas State Board of Examiners of Psychologists adopts amendments to rule §465.18, Forensic Services without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2134) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The amendments as adopted are necessary to comply with Section 6 of HB 1501 passed by the 85th Legislature, Regular Session. In short, the adoption change will ensure child custody evaluators licensed by this agency are held accountable for maintaining the confidentiality of the sensitive information referenced in §107.1111 of the Family Code.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §465.33

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §465.33, Improper Sexual Conduct without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2138) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The Board's intent behind the adopted rule is to more accurately describe sexual harassment. The adopted amendment is intended to provide greater clarity to licensees and the general public regarding what acts constitute sexual harassment, which may result in disciplinary actions by the Board.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802698
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.8

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §469.8, Rehabilitation Guidelines without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2140) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary is necessary because the agency has repealed former Board rule §463.15, Oral Examination.

The adopted amendment makes conforming changes by deleting any references to the former oral examination rule.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802700

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.21

The Texas State Board of Examiners of Psychologists adopts amendments to rule §470.21, Disciplinary Guidelines without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2141) and will not be republished.

The amendments are being adopted to ensure the protection and safety of the public.

The adopted amendments remove the schedule of sanctions for violations the Board considers worthy of revocation. The schedule of sanctions for revocation violations is adopted to be moved to §470.22, regarding the Board's schedule of sanctions, which is published elsewhere in this issue of the *Texas Register.* The Board adopts this change so the Board's schedule of disciplinary sanctions can be included in a single rule instead of two rules. These amendments are adopted to simplify the Board's rules, make the Board's schedule of sanctions more straightforward, and provide greater clarity to licensees and the general public. These adopted amendments also add a fifth category to the Board's schedule of sanctions, administrative penalty, for the least severe violations of Board rules.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802701
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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22 TAC §470.22

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §470.22, Schedule of Sanctions without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2143) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The adopted amendment adds the schedule of sanctions for violations the Board considers worthy of revocation. The schedule of sanctions for revocation violations is adopted to be removed from §470.21, regarding disciplinary guidelines, which is published elsewhere in this addition of the *Texas Register.* The Board adopts this change so that the schedule of disciplinary sanctions can be included in a single rule instead of two rules. This amendment is adopted to simplify the Board's rules, make the Board's schedule of sanctions more straightforward, and provide greater clarity to licensees and the general public. This adopted amendment also reflects the Board's recent review of its rules and updates have been made to accurately reflect the Board's current categorization of what each sanction should be for each rule violation.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 June 15, 2018.

TRD-201802702
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: July 5, 2018
Proposal publication date: April 6, 2018
For further information, please call: (512) 305-7700

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE

DIVISION 2. EMERGENCY ADMISSION

26 TAC §748.1263, §748.1265

The Texas Health and Human Services Commission (HHSC) adopts in Title 26, Chapter 748, Minimum Standards for General Residential Operations, amendments to §748.1263, concerning What constitutes an emergency admission to my operation?, and §748.1265, concerning May I take possession of a child from a law enforcement officer?, without changes to the proposed text

as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1576), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement Senate Bill 1571, 85th Legislature, Regular Session, 2017.

HHSC adopts the amendments to §748.1263 and §748.1265, under Subchapter I, Division 2, Emergency Admission, to comply with the Code of Criminal Procedure Article 2.273. The amendments delete as an emergency admission a "juvenile probation officer" releasing a child to an authorized emergency care services program and delete the option of an authorized emergency care services program taking possession of a child directly from a "juvenile probation officer", because the statute does not allow a juvenile probation officer to release a child in this scenario.

Stakeholder input and feedback was requested in the development of the proposed rules. The amendments were also posted on the Health and Human Services Rulemaking website for informal stakeholder comments from November 7 - 17, 2017. No input, feedback, or informal stakeholder comments were received regarding the amendments.

COMMENTS

The 30-day comment period ended April 15, 2018.

During this period, HHSC did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of DFPS to HHSC.

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 June 11, 2018.

TRD-201802581
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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Texas Health and Human Services Commission (HHSC) adopts in Title 26, Chapter 749, Minimum Standards for Child-Placing Agencies, amendments to §749.1183, concerning What constitutes an emergency admission to my child-placing agency?, §749.1185, May I take possession of a child from a law enforcement officer?, and §749.3395, concerning What information must I provide the adoptive parents prior to or at the time of adoptive placement?, without changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1578), and therefore will not be republished.

HHSC also adopts in Title 26, Chapter 749 an amendment to §749.3391, concerning What information must I compile for a child I am considering for adoptive placement?, with changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1578).

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to implement House Bill 834 (SECTION 2), Senate Bill (S.B.) 11 (SECTIONS 5 and 6), and S.B. 1571, 85th Legislature, Regular Session, 2017.

HHSC adopts the amendments to §749.1183 and §749.1185, under Subchapter H, Division 4, Emergency Admission, to comply with the Code of Criminal Procedure Article 2.273. The amendments delete as an emergency admission a "juvenile probation officer" releasing a child to a child-placing agency (CPA) and delete the option of a CPA taking possession of a child directly from a "juvenile probation officer," because the statute does not allow a juvenile probation officer to release a child in this scenario.

HHSC adopts the amendments to §749.3391 and §749.3395, under Subchapter Q, Division 5, Required Information, to comply with the Family Code §§162.0062, 162.007, and 162.603. The amendments: (1) require the health history of a Health, Social, Educational, and Genetic History report (HSEGH) to include whether the child's birth mother has consumed alcohol during pregnancy and been diagnosed with fetal alcohol spectrum disorder; (2) further emphasize that a CPA must inform adoptive parents of their right to examine the health history portion of the HESGH; and (3) require a CPA to provide the prospective adoptive parents with: (A) research (i.e. suggested reading materials or websites) on how any known health issue that the child has and/or any trauma that the child has experienced may impact child development and the family's ability to maintain permanency; (B) information about community services and other resources available to support adoptive parents; and (C) the options available to adoptive parents who are unable to care for an adoptive child.

Stakeholder input and feedback was used in the development of the proposed rules. The amendments were also posted on the Health and Human Services Rulemaking website for informal stakeholder comments from November 7 - 17, 2017. HHSC did not receive any informal stakeholder comments.

COMMENTS

The 30-day comment period ended April 15, 2018.

During this period, HHSC did not receive any comments regarding the proposed rules.

A minor clarification was made to §749.3391(a)(2)(B)(iv) to improve the readability and understanding of the rule.

SUBCHAPTER H. FOSTER CARE SERVICES: ADMISSION AND PLACEMENT

DIVISION 4. EMERGENCY ADMISSION

26 TAC §749.1183, §749.1185

STATUTORY AUTHORITY

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services

Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of DFPS to HHSC.

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

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SUBCHAPTER Q. ADOPTION SERVICES: CHILDREN

DIVISION 5. REQUIRED INFORMATION

26 TAC §749.3391, §749.3395

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of DFPS to HHSC.

§749.3391. What information must I compile for a child I am considering for adoptive placement?

(a) As part of the Health, Social, Educational, and Genetic History report, you must compile the following information for a child you are considering for adoption placement:
Figure: 40 TAC §749.3391(a)

(b) In addition, you must document the following in the child's record:
Figure: 40 TAC §749.3391(b)

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

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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS

DIVISION 5. CAPACITY AND CHILD/CARE-GIVER RATIO

26 TAC §749.2551

The Texas Health and Human Services Commission (HHSC) adopts in Title 26, Chapter 749, Minimum Standards for Child-Placing Agencies, an amendment to §749.2551, concerning What is the maximum number of children a foster family home may care for?, without changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1580), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to implement House Bill (H.B.) 7, Section 59, 85th Legislature, Regular Session, 2017.

HHSC adopts the amendment to §749.2551, under Subchapter M, Division 5, Capacity and Child/Caregiver Ratio, to comply with the Human Resources Code (HRC) §42.0463. The new statute authorizes HHSC to develop a rule to establish exceptions that will allow a foster family home to have an expanded capacity of seven or eight children (up from the current maximum of six children). The amendment allows a child-placing agency to implement an exception for each child over a capacity of six that is part of a sibling group, has a prior relationship with the foster family (including a kinship placement), or is being relocated due to a natural disaster. The amendment requires a child-placing agency to complete and sign an exception form for each foster family home using the exception. The amendment also clarifies that a child-placing agency may request an exception for a foster family home to care for seven or eight children for circumstances other than the aforementioned exceptions by using the process for requesting a variance; if the child-placing agency uses the variance process to request an exception, the Child Care Licensing (CCL) department of the HHSC Regulatory Services Division will make a decision to grant or deny the variance request using existing policies and procedures.

Stakeholder input and feedback was used in the development of the proposed rule. The proposed amendment was also posted for informal stakeholder comments on the Health and Human Services rulemaking website from November 7 - 17, 2017, and comments received were incorporated into the rule.

The federal district judge in *M.D. v. Perry, Civ. A. No. 2:11-cv-00084 (S.D. Tex.),* the Children's Rights lawsuit, ordered that no child in the permanent managing conservatorship (PMC) of the Texas Department of Family and Protective Services (DFPS) may be in a foster home with more than six children. However, the 5th Circuit has issued a stay with respect to that order. If this stay is lifted or the order prohibiting the placement of more than six PMC children in one home is otherwise effective, DFPS will be able to implement the order through its contracts with the child-placing agencies and any other entities that DFPS contracts with that are subject to the minimum standards in Chapter 749.

COMMENTS

The 30-day comment period ended April 15, 2018. During this period, HHSC received comments regarding the proposed rule from two commenters, including Therapeutic Family Life and an agency foster home. A summary of the comments and HHSC's response follows:

Comment: Regarding §749.2551(a), a former therapeutic foster group home commented that getting rid of all foster group homes was wrong because some of the foster group homes were outstanding. The commenter would like the ratio for foster family homes to be increased to eight.

Response: H.B. 7, Section 78, 85th Legislature, Regular Session, 2017 eliminated an agency foster group home as a CCL type of operation. In addition, HHSC does not have the authority to increase the ratio of children in foster family homes, because the definition of an "agency foster home" relating to the number of children a home may care for was not changed in HRC §42.002(11). The limit is still "not more than six children". New HRC §42.0463 only provides HHSC with the authority to develop a rule to establish exceptions that will allow a foster family home to have an expanded capacity of seven or eight children. HHSC adopts §749.2551(a) without changes.

Comment: Regarding §749.2551, the commenter wanted to view a draft of the Foster Family Home Exception Form and wanted to know why there was no requirement for awake night staff in the rule.

Response: A response sent to the commenter included a copy of the draft Foster Family Home Exception Form and an explanation that the awake night staff requirement is a contract requirement of the Child Protective Services Division of the Department of Family and Protective Services. Awake night staff is not an HHSC requirement, which is why it is not mentioned in the rule. HHSC adopts §749.2551 without changes.

STATUTORY AUTHORITY

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of DFPS to HHSC.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.364

The Comptroller of Public Accounts adopts amendments to §3.364, concerning professional employer services, without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2948). The following amendments implement Senate Bill 745, 85th Legislature, 2017, transferring Tax Code, §151.057 (Services by Employees) to §151.3503 (Services by Employees). Senate Bill 745 was effective September 1, 2017.

The comptroller changes the title of this section from "Professional Employer Services" to "Services by Employees" to follow the statutory language.

The comptroller amends subsection (a) to add definitions of terms contained in Senate Bill 745 and to add definitions of terms used in this section, but not previously defined. The comptroller renumbers the existing paragraphs accordingly.

The comptroller adds new paragraph (1) to define "affiliated group" which has the meaning given in Tax Code, §151.3503(c)(1) and §171.0001(1) (General Definitions).

The comptroller adds new paragraph (6) to define the term "controlling interest," which appears in the definition of "affiliated group." The comptroller gives this term the meaning assigned by Tax Code, §171.0001(8).

The comptroller adds new paragraph (7) to define "host employer" as defined in Tax Code, §151.3503(c)(2).

The comptroller deletes former paragraph (8), defining the term "temporary help," based on the statutory changes made by Senate Bill 745.

The comptroller amends renumbered paragraph (10)(A), defining professional employer services, to replace the phrase "temporary help" with the new defined term "temporary employee."

The comptroller adds new paragraph (11) to define the term "temporary employee."

The comptroller adds new paragraph (12) to implement Senate Bill 745 by defining the term "temporary employment service" based on the meaning in Tax Code, §151.3503(c)(3) and Labor Code, §93.001 (Definitions), with one revision. The comptroller replaces the phrase "the clients of the service" with the defined term "host employer."

The comptroller amends subsection (b)(4) to update the title change to §3.285 of this title.

The comptroller amends subsection (d) to implement Senate Bill 745 by deleting existing language addressing temporary help services and replacing it with language describing the tax responsibilities of temporary employment services under §151.3503(a)(2). The comptroller adds paragraph (2) explaining that a temporary employment service may rely upon a host employer's blanket exemption certificate.

The comptroller adds new subsection (e) to implement existing law by explaining when services performed by an employer's own employees are exempt. This section also adds that employees are not required to provide exemption certificates to their employers.

No comments were received regarding adoption of the amendment.

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules, Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.3503.

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

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SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.598

The Comptroller of Public Accounts adopts amendments to §3.598, concerning margin: tax credit for certified rehabilitation of certified historic structures, with changes to the proposed text as published in the February 16, 2018, issue of the *Texas Register* (43 TexReg 841). The amendments implement House Bill 1003, 85th Legislature, 2017. This legislation took effect June 14, 2017. In addition, the amendments replace existing language to implement the statutory distinction between claiming and establishing the credit for the certified rehabilitation of a certified historic structure.

The comptroller amends subsection (b)(6) to implement House Bill 1003, which expands the statutory definition of the term "eligible costs and expenses" to include expenses incurred by certain institutions of higher education and university systems.

The comptroller amends subsection (d)(4) to replace the word "claiming" with "establishing" to distinguish between the entity establishing the credit and the entity claiming the credit. This wording change follows existing distinctions made in subsection (d) of this section.

The comptroller amends subsection (e)(1) to replace the words "that requested" with "establishing" to distinguish between the entity establishing the credit and the entity requesting the credit. This wording change follows existing distinctions made in subsection (d) of this section.

The comptroller also amends subsection (e)(3), which implements Tax Code, §171.905(c) (Amount of Credit; Limitations), and subsection (h)(5), which implements Tax Code, §171.908(c) (Sale or Assignment of Credit), to replace the word "claim" with the word "establish." These amendments implement the intent of the legislature to allow an entity to *claim* a credit over multiple years even though the costs and expenses associated with that credit can only be used once to *establish* the credit.

No comments were received regarding adoption of the amendment.

The comptroller amends subsection (b)(6)(B) from the proposed version of this section to accurately reflect the effective dates of the definition of eligible costs and expenses when applied to costs and expenses incurred by institutions of higher education or university systems. The effective date of this definition for these types of entities differs from the effective date of the definition when applied to non-profit corporations based on the enabling legislation. Compare House Bill 1003, Section 10(a), 85th Legislature, 2017 ("Section 171.901(4), Tax Code, as amended by Section 8(a) of this Act, applies only to costs and expenses incurred on or after the effective date of this Act.") with House Bill 3230, Section 2, 84th Legislature, 2015 ("This Act applies only to a report originally due on or after the effective date of this Act.").

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendments implement Tax Code, §171.901 (Definitions) and §171.905 (Amount of Credit; Limitations).

§3.598. Margin: Tax Credit for Certified Rehabilitation of Certified Historic Structures.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2015, except as otherwise noted.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Audited cost report--A report that itemizes the eligible costs and expenses incurred by the entity in the certified rehabilitation of the certified historic structure and that is issued by a certified public accountant who holds a certificate issued under Occupations Code, Chapter 901 (Accountants) or is an out-of-state practitioner with substantially equivalent qualifications as provided by Occupations Code, §901.462 (Practice by Out-of-State Practitioner with Substantially Equivalent Qualifications).

(2) Certificate of eligibility--The certification issued by the commission in accordance with Tax Code, §171.904 (Certification of Eligibility), confirming that the property to which the eligible costs and expenses relate is a certified historic structure and that the rehabilitation qualifies as a certified rehabilitation; and specifying the date the historic structure was first placed in service after the rehabilitation.

(3) Certified historic structure--A property in this state that is:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under Government Code, §442.006 (State Historical Marker Program), or as a state archeological landmark under Natural Resources Code, Chapter 191 (Antiquities Code); or

(C) certified by the commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a local district certified by the United States Department of the Interior in accordance with 36 Code of Federal Regulations, §67.9 (Certification of State or Local Historic District).

(4) Certified rehabilitation--The rehabilitation of a certified historic structure that the commission has certified as meeting the United States Secretary of the Interior's Standards for Rehabilitation as defined in 36 Code of Federal Regulations, §67.7 (Standards of Rehabilitation).

(5) Commission--The Texas Historical Commission.

(6) Eligible costs and expenses--Except as provided in subparagraphs (A) and (B) of this paragraph, qualified rehabilitation expenditures, as defined by Internal Revenue Code, §47(c)(2) (Rehabilitation Credit), incurred by the entity establishing the credit.

(A) Nonprofit corporation exempt from federal income tax. Effective for reports due on or after January 1, 2016, the provisions of Internal Revenue Code, §47(c)(2)(B)(i) (Straight-line depreciation must be used) and (v) (Tax-exempt use property) do not apply to costs and expenses incurred by an entity exempted under Tax Code, §171.063 (Exemptions-Nonprofit Corporation Exempt from Federal Income Tax) if the other provisions of Internal Revenue Code, Section §47(c)(2) are satisfied.

(B) Institution of higher education or university system. Effective for costs and expenses incurred on or after June 14, 2017, and before January 1, 2022, the provisions of Internal Revenue Code, §47(c)(2)(B)(i) and (v) do not apply to costs and expenses incurred by an institution of higher education or university system as defined by Education Code, §61.003 (Definitions), if the other provisions of Internal Revenue Code, §47(c)(2) are satisfied.

(7) Placed-in-service date--The date specified on the certificate of eligibility issued by the commission. See also 13 TAC §13.1.

(8) Year--A calendar year.

(c) Qualifications for credit. An entity may qualify for a credit for eligible costs and expenses incurred by the entity in the rehabilitation of a certified historic structure provided in this section if:

(1) the rehabilitated certified historic structure is placed in service on or after September 1, 2013;

(2) the entity has an ownership interest in the certified historic structure in the year during which the structure is placed in service after the rehabilitation;

(3) the total amount of eligible costs and expenses incurred by the entity exceeds $5,000; and

(4) the entity received a Certificate of Eligibility from the commission.

(d) Establishing the credit.

(1) Required documentation. The entity that incurred the eligible costs and expenses in the certified rehabilitation of a certified historic structure must submit the following documentation to the comptroller to establish the credit:

(A) a Texas Franchise Tax Historic Structure Credit Registration, or any successor to the form promulgated by the comptroller, which includes an attestation of the total eligible costs and expenses incurred by the entity on the rehabilitation of the certified historic structure;

(B) a Certificate of Eligibility issued by the commission. The certificate must confirm:

(i) the property to which the eligible costs and expenses relate is a certified historic structure;

(ii) the rehabilitation qualifies as a certified rehabilitation; and

(iii) the date the certified historic structure was first placed in service after the rehabilitation; and

(C) an audited cost report.

(2) Submission of documentation. The documentation required in paragraph (1) of this subsection may be submitted to the comptroller:

(A) on or with the franchise tax report for the period for which the tax credit is claimed; or

(B) upon receipt of the Certificate of Eligibility issued by the commission.

(3) The burden of establishing eligibility for the credit is on the entity incurring the eligible costs and expenses.

(4) The comptroller will rely on the audited cost report. It is the responsibility of the certified public accountant hired by the entity establishing the credit to make a determination on whether items qualify as eligible costs and expenses.

(5) The credit must be established within the statute of limitations based on the due date of the first report on which the credit may be claimed under subsection (f)(1) of this section.

(6) Texas Franchise Tax Historic Structure Credit Certificate. Upon receipt of the required documentation, the comptroller will issue to the entity that incurred the eligible costs and expenses a Texas Franchise Tax Historic Structure Credit Certificate indicating the entity as the owner of the credit and the amount of credit available to that entity.

(e) Amount of credit.

(1) The total amount of the credit that may be claimed with respect to the certified rehabilitation of a single certified historic structure may not exceed 25% of the total eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure. For purposes of approving the credit, the comptroller will rely on the audited cost report provided by the entity establishing the credit.

(2) The total credit claimed for a report, including the amount of any carryforward under subsection (g) of this section, may not exceed the amount of franchise tax due for the report after any other applicable tax credits.

(3) Eligible costs and expenses may only be counted once in determining the amount of the credit available, and more than one entity may not establish a credit for the same eligible costs and expenses.

(f) Claiming the credit.

(1) The first report on which the credit may be claimed is the report based on the accounting period during which the rehabilitated structure is placed in service. Rehabilitated historic structures placed in service between September 1, 2013, and December 31, 2013, are considered to be placed in service January 1, 2014, for purposes of this paragraph only. For example, a 2015 report with an accounting year of January 1 through December 31, 2014, may claim a credit for historic structures placed in service within the 2014 accounting year.

(2) An entity shall file with every report on which the credit is claimed the Texas Franchise Tax Historic Structure Credit Certificate issued to the entity by the comptroller, or any successor to the form promulgated by the comptroller.

(3) The reporting entity for a combined group may claim the credit for each member entity that has established a credit under this section.

(4) The burden of establishing the value of the credit is on the entity claiming the credit.

(g) Carryforward.

(1) If an entity is eligible for a credit that exceeds the limitations under subsection (e)(2) of this section, the entity may carry the unused credit forward and apply the credit to the tax imposed by this chapter in any of the succeeding five report years following the first report year after the certified historic structure is placed in service.

(2) A carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the limitation under subsection (e)(2) of this section.

(3) The sale, assignment, or allocation of a credit in accordance with subsection (h) of this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed.

(4) For example, for a structure placed in service in 2014, a credit may be claimed on the 2015 report and the credit carryforward may be applied to the following five consecutive reports: the 2016, 2017, 2018, 2019, and 2020 reports. The credit expires after the 2020 report.

(h) Sale, assignment, or allocation of credit.

(1) Sale or assignment. An entity that incurs eligible costs and expenses may sell or assign all or part of the credit that may be claimed for those costs and expenses to one or more entities, and any entity to which all or part of the credit is sold or assigned may sell or assign all or part of the credit to another entity. There is no limit on the total number of transactions for the sale or assignment of all or part of the total credit authorized under this section, however, collectively, all transfers are subject to the maximum total limits provided by subsection (e) of this section.

(2) Allocation. A credit earned or purchased by, or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of that entity in accordance with the provisions of any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure. A partner, member, or shareholder to whom a credit is allocated may further allocate all or part of the allocated credit as provided in this paragraph or may sell or assign the allocated credit as provided in paragraph (1) of this subsection. There is no limit on the total number of allocations of all or part of the total credit authorized under this section, however, collectively, all transfers are subject to the maximum credit limits provided by subsection (e) of this section.

(3) Documentation.

(A) An entity that sells, assigns, or allocates a credit under this section to another entity shall provide a copy of the certificate of eligibility, together with the audited cost report, to the recipient of the credit.

(B) An entity that sells, assigns, or allocates a credit under this section and the entity to which the credit is sold, assigned, or allocated shall jointly submit:

(i) written notice of the sale, assignment, or allocation to the comptroller on a Texas Franchise Tax Sale, Assignment or Allocation of Historic Structure Credit form, or any successor to the form promulgated by the comptroller, not later than the 30th day after the date of the sale, assignment, or allocation. The notice must include the date of the sale, assignment, or allocation; the amount of the credit sold, assigned, or allocated; the names and federal identification numbers of the entity that sold, assigned, or allocated the credit or part of the credit and of the entity to which the credit or part of the credit was sold, assigned, or allocated; and the amount of the credit owned by the selling, assigning, or allocating entity before the sale, assignment, or allocation, and the amount the selling, assigning, or allocating entity retained, if any, after the sale, assignment, or allocation; and

(ii) Texas Franchise Tax Historical Structure Credit Certificate.

(C) Until the required documentation under subparagraph (B) of this paragraph is received by the comptroller's office, the recipient entity will not be allowed to claim the credit.

(4) Carryforwards. The sale, assignment, or allocation of a credit in accordance with this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed.

(5) Limitation. After an entity establishes a credit for eligible costs and expenses, another entity may not use the same costs and expenses as the basis for establishing a credit.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 4. TEXAS MILITARY DEPARTMENT

CHAPTER 121. PERSONNEL--APPLICATION PROCEDURES AND POLICIES FOR STATE EMPLOYMENT

37 TAC §§121.1 - 121.5

The Texas Military Department adopts the repeal of 37 TAC §§121.1 - 121.5, concerning application procedures and policies for state employment. The repeals are adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2953).

REASONED JUSTIFICATION. The repeal of 37 TAC §§121.1 - 121.5 is needed, as the rules were unnecessary and redundant of current law and policy.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. These repeals are adopted under Texas Government Code §2001.004 which requires a state agency to adopt or repeal rules of practice, and by the authority of the Texas Government Code §437.052, which provides the Adjutant General with policy making authority for the department.

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

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TRD-201802615
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CHAPTER 123. RELEASE OF INFORMATION

37 TAC §§123.1 - 123.5

The Texas Military Department adopts the repeal of 37 TAC §§123.1 - 123.5, concerning the release of information. The repeals are adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2954).

REASONED JUSTIFICATION. The repeal of 37 TAC §§123.1 - 123.5 is needed, as the rules were unnecessary and redundant of current law and policy.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed repeals.

STATUTORY AUTHORITY. These repeals are adopted under Texas Government Code §2001.004, which requires a state agency to adopt or repeal rules of practice, and by the authority of the Texas Government Code §437.052, which provides the Adjutant General with policy making authority for the department.

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

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CHAPTER 130. BUILDING CONSTRUCTION ADMINISTRATION

37 TAC §§130.1 - 130.6

The Texas Military Department adopts the repeal of 37 TAC §§130.1 - 130.6, concerning building construction administration. The repeals are adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2955).

REASONED JUSTIFICATION. The repeal of 37 TAC §§130.1 - 130.6 is needed as the rules were unnecessary and redundant of current law and policy.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the repeal.

STATUTORY AUTHORITY. These repeals are adopted under Texas Government Codes §2261.202, §2261.253, and §437.115.

Texas Government Code §2261.202 requires agencies to maintain rules regarding contract monitoring roles and responsibilities.

Texas Government Code §2261.253 requires state agencies to establish procedures by rule to identify each contract that requires enhanced contract or performance monitoring.

Texas Government Code §437.115 requires the department to have rules governing the preparation, submission, and opening of bids for contracts.

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

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Sonya J. Batchelor
General Counsel
Texas Military Department
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For further information, please call: (512) 782-5057

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37 TAC §130.1

The Texas Military Department adopts new rule 37 TAC §130.1, concerning building construction administration. The department adopts the new rule without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2956).

REASONED JUSTIFICATION. The adoption of 37 TAC §130.1 is needed to clarify the department's practices regarding contract management.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed adoption.

STATUTORY AUTHORITY. This rule is adopted under Texas Government Codes §2261.202, §2261.253, and §437.115.

Texas Government Code §2261.202 requires agencies to maintain rules regarding contract monitoring roles and responsibilities.

Texas Government Code §2261.253 requires state agencies to establish procedures by rule to identify each contract that requires enhanced contract or performance monitoring.

Texas Government Code §437.115 requires the department to have rules governing the preparation, submission, and opening of bids for contracts.

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

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CHAPTER 131. PREVAILING WAGE RATE DETERMINATION

37 TAC §131.1

The Texas Military Department adopts the repeal of 37 TAC §131.1, concerning the prevailing wage rate determination. The repeal is adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2956).

REASONED JUSTIFICATION. The repeal of 37 TAC §131.1 is needed because the rules were unnecessary and redundant of current law and policy.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. This repeal is adopted under Texas Government Code §2001.004 which requires a state agency to adopt or repeal rules of practice, and by the authority of the Texas Government Code §437.052, which provides the Adjutant General with policy making authority for the department.

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

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CHAPTER 132. SALE OF DEPARTMENT PROPERTY

37 TAC §§132.1 - 132.3

The Texas Military Department adopts the repeal of §§132.1 - 132.3. The repeals are adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2957).

REASONED JUSTIFICATION. The repeal of 37 TAC §§132.1 - 132.3 is needed because the rules were unnecessary and redundant of current law and policy.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed repeals.

STATUTORY AUTHORITY. This repeals are adopted under Texas Government Code §2001.004 which requires a state agency to adopt or repeal rules of practice, and by the authority of the Texas Government Code §437.054, which provides the Adjutant General with policy making authority for the department.

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

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37 TAC §132.1

The Texas Military Department adopts new rule 37 TAC §132.1, concerning the sale of real property. The department adopts the new rule without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2958).

REASONED JUSTIFICATION. The adoption of 37 TAC §132.1 is needed to clarify the department's practices regarding its sale of real property.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed adoption.

STATUTORY AUTHORITY. This rule is adopted under Texas Government Code §2001.004 which requires a state agency to adopt or repeal rules of practice, and by the authority of the Texas Government Code §437.054, which provides the Adjutant General with policy making authority for the department.

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

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For further information, please call: (512) 782-5057

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CHAPTER 133. PROCUREMENT

37 TAC §133.1

The Texas Military Department adopts 37 TAC §133.1, concerning the department's procurement process. The rule is adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2959).

REASONED JUSTIFICATION. 37 TAC §133.1 is needed to provide direction to the public concerning the department's proce-

dures concerning bidding requirements as they relate to procurement.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed rule.

STATUTORY AUTHORITY. This rule is adopted under Texas Government Codes §2261.202, §2261.253, and §437.115.

Texas Government Codes §2261.202 requires agencies to adopt rules regarding contract monitoring roles and responsibilities.

Texas Government Code §2261.253 requires state agencies to establish procedures by rule to identify each contract that requires enhanced contract or performance monitoring.

Texas Government Code §437.115 requires the department to adopt rules governing the preparation, submission, and opening of bids for contracts.

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

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CHAPTER 134. PROTESTS

37 TAC §134.1

The Texas Military Department adopts 37 TAC §134.1, concerning procedures and requirements for formal bid protests. The rule is adopted with changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2960) due to a grammar correction.

REASONED JUSTIFICATION. 37 TAC §134.1 is needed to provide direction to the public concerning the department's uniform procedures for bid protest.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed rule.

STATUTORY AUTHORITY. This rule is adopted under Texas Government Codes §2261.202, §2261.253, and §437.115.

Texas Government Code §2261.202 requires agencies to adopt rules regarding contract monitoring roles and responsibilities.

Texas Government Code §2261.253 requires state agencies to establish procedures by rule to identify each contract that requires enhanced contract or performance monitoring.

Texas Government Code §437.115 the department to adopt rules governing the preparation, submission, and opening of bids for contracts.

§134.1 Protests.

(a) The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise.

(1) Texas Military Department (TMD), an agency of the state.

(2) Procurement Director - procurement director of TMD.

(3) Executive Director - executive director and administrative head of the TMD.

(4) Interested Parties - All vendors who have submitted bids, proposals or other expressions of interest for the provision of goods or services pursuant to a contract with Statewide Procurement Division of the comptroller's office.

(b) Any actual or prospective bidder, offeror, or contractor who considers himself to have been aggrieved in connection with the solicitation, evaluation, or award of a contract by TMD may formally protest to the procurement director of TMD. Such protests must be made in writing and received by the procurement director within 10 working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. Formal protests must conform to the requirements of subsections (b) and (d) of this section, and shall be resolved through use of the procedures that are described in subsections (c) - (i) of this section. The protesting party must mail or deliver copies of the protest to the using agency and other interested parties.

(c) In the event of a timely protest under this section, TMD shall not proceed further with the solicitation or award of the contract unless procurement director of TMD makes a written determination that the contract must be awarded without delay, to protect the best interests of the state.

(d) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision that the protesting party alleges has been violated;

(2) a specific description of each action by TMD that the protesting party has identified pursuant to paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) a statement of any issues of law or fact that the protesting party contends must be resolved; and

(5) a statement of the argument and authorities that the protesting party offers in support of the protest;

(e) The procurement director of TMD may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal to the Executive Director of TMD. The procurement director of TMD may solicit written responses to the protest from other interested parties.

(f) If the protest is not resolved by mutual agreement, the procurement director of TMD shall issue a written determination that resolves the protest.

(1) If the procurement director TMD determines that no violation of statutory or regulatory provisions has occurred, then the procurement director of TMD shall inform the protesting party by letter that sets forth the reasons for the determination.

(2) If the procurement director of TMD determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then the procurement director of TMD shall inform the protesting party of that determination by letter that details the reasons for the determination and the appropriate remedy.

(3) If the procurement director of TMD determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, the procurement director of TMD shall inform the protesting party of that determination by letter that details the reasons for the determination. This letter may include an order that declares the previously awarded contract void.

(g) The protesting party may appeal a determination of a protest by the procurement director of TMD to the executive director of TMD. An appeal of the procurement director's determination must be in writing and received by TMD not later than 10 working days after the date on which the procurement director has sent written notice of their determination. The scope of the appeal shall be limited to review of the procurement director's determination.

(1) The executive director shall issue a written letter of determination of the appeal to the parties which shall be final.

(2) A protest or appeal that is not filed timely shall not be considered unless good cause for delay is shown or the appeal raises issues that are significant to agency procurement practices or procedures in general.

(3) A written decision by the procurement director shall be the final administrative action of TMD unless appealed to the executive director. In the case of appeal, the executive director's decision will serve as the final administrative action of TMD.

(h) TMD shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of TMD.

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

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CHAPTER 135. TUITION ASSISTANCE

37 TAC §135.1

The Texas Military Department adopts 37 TAC §135.1, concerning procedures and requirements concerning tuition assistance. The rule is adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2961).

REASONED JUSTIFICATION. 37 TAC §135.1 is needed to provide direction to departmental employees regarding access to, and procedures for, tuition assistance.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed rule.

STATUTORY AUTHORITY. This rule is adopted under Texas Government Code §656.048.

Texas Government Code §656.048 requires state agencies to adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency, as well as the obligations assumed by the administrators and employees on receiving the training and education.

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

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CHAPTER 136. HISTORICALLY UNDERUTILIZED BUSINESSES

37 TAC §136.1

The Texas Military Department adopts 37 TAC §136.1, concerning procedures and requirements concerning its historically underutilized business program. The rule is adopted without changes to the proposed text as published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 2962).

REASONED JUSTIFICATION. 37 TAC §136.1 is needed to provide information to the public regarding departmental processes concerning historically underutilized businesses.

SUMMARY OF COMMENTS. The Texas Military Department did not receive any comments on the proposed rule.

STATUTORY AUTHORITY. This rule is adopted under Texas Government Codes §2261.202, §2261.253, and §437.115.

Texas Government Code §2261.202 requires agencies to adopt rules regarding contract monitoring roles and responsibilities.

Texas Government Code §2261.253 requires state agencies to establish procedures by rule to identify each contract that requires enhanced contract or performance monitoring.

Texas Government Code §437.115 requires the department to adopt rules governing the preparation, submission, and opening of bids for contracts.

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 745. LICENSING

The Texas Health and Human Services Commission (HHSC) adopts in Title 40, Chapter 745, Licensing, amendments to §745.129, concerning What miscellaneous programs are exempt from Licensing regulation?, §745.273, concerning Which residential child-care operations must meet the public notice and hearing requirements?, §745.275, concerning What are the specific requirements for a public notice and hearing?, §745.277, concerning What will happen if I fail to comply with the public notice and hearing requirements?, §745.279, concerning How may the results of a public hearing affect my application for a permit or a request to amend my permit?, §745.4201, concerning May I take possession of a child from a law enforcement officer?), §745.4203, concerning How does a child-placing agency become authorized to take possession of a child from a law enforcement officer?, and the repeals of §745.271, concerning After Licensing accepts my application, must I meet any additional requirements before Licensing may approve my application?, and §745.281, concerning How may the results of a public hearing affect my ability to verify an agency foster home or agency foster group home?, without changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register*(43 TexReg 1619), and therefore will not be republished. Section 745.4205 is adopted with changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1619), and therefore will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments and repeals is to implement House Bill (H.B.) 7 (SECTION 46), H.B. 871 (SECTION 12), and Senate Bill 1571, 85th Legislature, Regular Session, 2017.

HHSC adopts the amendment to §745.129, under Subchapter C, Division 2, Exemptions from Regulation, to add two new exemptions from licensure and to comply with the Human Resources Code (HRC) §42.041(b)(24) (there are two paragraphs (24) for this statute). The first new exemption is for one or more children or sibling groups living with a caregiver, if the caregiver does not care for more than six children, does not receive any compensation, and has a written agreement with the parent of each child or sibling group. The second exemption is for a program that provides respite care for a local mental health authority under a contract with that authority.

HHSC adopts the amendments to §§745.273, 745.275, 745.277, and 745.279 and the repeals of §745.271 and §745.281, under Subchapter D, Division 4, Public Notice and Hearing Requirements for Residential Child-Care Operations, to comply with HRC §42.0461. The amendments and repeals: (1) delete moot public notice and hearing requirements for an independent or agency foster group home or foster family home, because the Child Care Licensing (CCL) department of the HHSC Regulatory Services Division can no longer license an independent foster family or group home and a child-placing agency cannot verify a foster family home that is not located in the foster parent's actual residence; and (2) clarify the information that CCL will consider when issuing or amending a permit in response to the results of a public hearing.

HHSC adopts the amendments to §§745.4201, 745.4203, and 745.4205, under Subchapter H, Division 2, Taking Possession of a Child Directly from a Law Enforcement Officer, to comply with the Code of Criminal Procedure Article 2.273. The amendments: (1) update the wording of the Division and the rules to be consistent with the statute, which allows a law enforcement officer to release a child to any residential child care operation licensed under HRC, Chapter 42, and authorized by CCL to take possession of the child; (2) delete the option of a "juvenile probation officer" releasing a child directly to an authorized residential child care operation because the statute does not allow it; and (3) delete the mention of an outdated form and replaces the form with a list of information that the operation must obtain when a law enforcement officer releases a child to an authorized residential child care operation.

Stakeholder input and feedback was used in the development of the proposed rules. The amendments and repeals were also posted on the Health and Human Services Rulemaking website for informal stakeholder comments from November 7 - 17, 2017. Only one informal stakeholder comment was received, but no changes were made.

COMMENTS

The 30-day comment period ended April 15, 2018.

During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION
DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §745.129

STATUTORY AUTHORITY

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of DFPS to HHSC.

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

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TRD-201802576
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SUBCHAPTER D. APPLICATION PROCESS
DIVISION 4. PUBLIC NOTICE AND HEARING REQUIREMENTS FOR RESIDENTIAL CHILD-CARE OPERATIONS

40 TAC §745.271, §745.281

The repeals are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of DFPS to HHSC.

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

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40 TAC §§745.273, 745.275, 745.277, 745.279

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of DFPS to HHSC.

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

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SUBCHAPTER H. RESIDENTIAL CHILD-CARE: DRUG TESTING AND LAW ENFORCEMENT ADMISSIONS
DIVISION 2. TAKING POSSESSION OF A CHILD DIRECTLY FROM A LAW ENFORCEMENT OFFICER

40 TAC §§745.4201, 745.4203, 745.4205

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, and §531.02011, which transferred the regulatory functions of DFPS to HHSC.

§745.4205. What must I do when I take possession of a child from a law enforcement officer?

When you take possession of a child from a law enforcement officer, you must:

(1) With the assistance of the officer who has the child, obtain and document any available information regarding:

(A) The identity of the child, including name, age, date of birth, gender, race, hair color, eye color, height, and address;

(B) The identity of the child's parents, including names, dates of birth, addresses, and phone numbers;

(C) Individuals or relatives that the child may be released to;

(D) The officer that you are taking possession of the child from, including the officer's full name, badge number, department the officer works for, and case number; and

(E) Any other information that must be included in the child's record for an emergency admission, as listed in 26 TAC §748.1271 of this title (relating to At the time of an emergency admission, what information must I document in the child's record?) or 26 TAC §749.1189 of this title (relating to At the time of an emergency admission, what information must I document in the child's record?);

(2) Immediately notify the Department of Family and Protective Services (DFPS) that you have taken possession of the child by calling the Texas Abuse Hotline; and

(3) Provide the information obtained and documented from paragraph (1) of this section to the DFPS investigator who responds to the call.

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

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

TWC adopts amendments to the following sections of Chapter 809, relating to Child Care Services, without changes, as published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1236):

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §809.13 and §809.19

Subchapter D. Parent Rights and Responsibilities, §809.71, and §809.75

Subchapter E. Requirements to Provide Child Care, §809.93

The Texas Workforce Commission (TWC) adopts the following new section to Chapter 809, relating to Child Care Services, with-

out changes, as published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1236):

Subchapter C. Eligibility for Child Care Services, §809.55

TWC adopts amendments to the following section of Chapter 809, relating to Child Care Services, with changes, as published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1236):

Subchapter D. Parent Rights and Responsibilities, §809.78

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 809 amendments is to include changes resulting from the federal Child Care and Development Fund (CCDF) final rules published September 30, 2016, and the CCDF Final Rule Frequently Asked Questions (FAQ) published December 14, 2016, by the US Department of Health and Human Services Administration for Children and Families (ACF).

The federal Child Care and Development Block Grant (CCDBG) Act requires state lead agencies to ensure that once a child is determined eligible for CCDF-subsidized services, the child shall be considered eligible and shall receive services for a minimum of 12 months before eligibility can be redetermined. The December 15, 2015, Notice of Proposed Rule Making (NPRM) issued by ACF, the federal administrator of the CCDBG Act, allows terminating care before 12 months only in situations in which:

--a change in family income caused the family's income to exceed 85 percent of the state median income (SMI); or

--a parent experiences a loss of work or cessation of attendance at a job training or educational program that is not a temporary change as defined in NPRM §98.21(a)(1)(ii).

As the CCDBG Act and the guidance published in the NPRM required states to demonstrate compliance with the 12-month eligibility requirements by October 1, 2016, TWC adopted rules September 6, 2016, to be effective October 1, 2016. Subsequently, in the final rules, ACF revised its initial position in response to comments, adding new limited circumstances in which a lead agency may discontinue assistance before the next scheduled redetermination. Given that TWC's rules predated the CCDF final rules, ACF's additional factors were not included in current Chapter 809 rules; to be consistent with federal law and to ensure that Texas receives the benefit of any additional federal flexibility, TWC must add these new additional criteria to Chapter 809 rules. Specifically, care may be discontinued where there has been:

--excessive unexplained absences, which continue after sufficient notice to the parent and provider; or

--intentional program violations that invalidate prior determinations of eligibility, including nonpayment of the family co-payment.

Termination for Excessive Unexplained Absences

New 45 CFR §98.21(a)(5)(i) states that lead agencies may terminate care in circumstances in which there have been "excessive unexplained absences" as defined by the state. Section 98.21(a)(5)(i) also requires that before terminating care for excessive absences, multiple attempts must be made to contact the family and the provider, including notification of possible discontinuation of assistance. Additionally, the preamble to the CCDF final rules includes the following guidance:

Regarding termination due to excessive unexplained absences, we stress that every effort should be made to contact the family prior to terminating benefits. Such efforts should be made by the Lead Agency or designated entity, which may include coordinated efforts with the provider to contact the family.

If a State chooses to terminate for this reason, the Lead Agency must define how many unexplained absences would constitute an "excessive" amount and therefore grounds for early termination. The definition of excessive should not be used as a mechanism for prematurely terminating eligibility and must be sufficient to allow for a reasonable number of absences. It is ACF's view that unexplained absences should account for at least 15 percent of a child's planned attendance before such absences are considered excessive. This 15 percent aligns generally with Head Start's attendance policy and ACF will consider it as a benchmark when reviewing and monitoring this requirement.

Termination for Intentional Program Violations

New 45 CFR §98.21(a)(5)(iii) allows states to terminate care for "intentional program violations that invalidate prior determinations of eligibility." ACF further clarified in the CCDF FAQ that states have flexibility to define nonpayment of parent share of cost as an intentional program violation. Additionally, 45 CFR §98.45(k)(3) states that a lead agency's sliding fee scale shall provide for "affordable family co-payments that are not a barrier to families receiving assistance under this part." Therefore, if lack of payment becomes a common occurrence, and lead agencies are frequently ending assistance to families for not making co-payment, the lead agency may want to reexamine its sliding fee scale to ensure that it is not in violation of this requirement by being a barrier to assistance.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A.

§809.2. Definitions

Consistent with 45 CFR §98.21(a)(5)(i), TWC defines how many unexplained absences constitute an "excessive" amount, and would therefore be grounds for early termination, by proposing to amend §809.2 to define "excessive unexplained absences" as more than 40 unexplained absences in a 12-month eligibility period.

Paragraphs have been renumbered as needed.

Comment: Several commenters requested clarification of the definition of "excessive unexplained absences" with regard to "Z" days (missed attendance recordings) counting toward the determination, as well as how to determine if an absence can later be "explained."

Response: TWC clarifies that because termination does not occur until after 40 unexplained absences accrue, absences that are due to documented chronic illness or disability or a court-ordered custody or visitation agreement may be removed from the accrual count. Additionally, if the parent or provider calls in a timely manner to explain why attendance recording was missed and is correcting the issue (i.e., the parent timely requests a replacement attendance tracking card or the provider

requests to replace faulty equipment), those absences may be removed from the accrual, per local Board policy. Both parents and providers share responsibility for reporting attendance and for documenting reasons for absences; providers must ensure that the attendance recording device is available, connected and working properly, and parents are obligated to report attendance using the attendance recording device or through the 1-800 number. Parents also have the opportunity to revise attendance reporting within 6 days to correct instances of "Z" days where no attendance is reported. Parents may also call the Agency's Child Care Services unit to report the issue. The limit of 40 unexplained absences before termination takes into consideration reasonable amount of general absences (including absences coded as "I", "A," or "C") for non-chronic conditions before a child's authorization for care is disrupted. Although not every missed attendance recording, or "Z" day, can justifiably be removed from the absence count, TWC emphasizes it is critical that the reporting system be used and reasons for absences be provided.

Comment: One commenter asked for a detailed explanation of the statement, "intentional program violations that invalidate prior determinations of eligibility" as it was discussed in the preamble.

Response: New 45 CFR 98.21(a)(5)(iii) allows lead agencies the option to discontinue assistance before the next redetermination in limited circumstances, including the presence of "intentional program violations," and allows lead agencies to define what actions rise to this definition. TWC uses §809.19(d) to identify failure to pay the parent share of cost as an intentional program violation that may invalidate a previous determination of eligibility and allow for termination of child care services.

SUBCHAPTER B. GENERAL MANAGEMENT

TWC adopts the following amendments to Subchapter B.

§809.13. Board Policies for Child Care Services

Based on ACF's clarification in the CCDF FAQ that states have flexibility to define nonpayment of parent share of cost as an intentional program violation, TWC proposes to amend §809.13(c)(3) to require Local Workforce Development Boards (Boards) to include in their parent share of cost policies an explanation that failure to pay the parent share of cost is a program violation that is subject to early termination of child care. The Board's policy also must include an assessment of what constitutes affordability when frequent terminations occur pursuant to §809.19(d) - (e).

Comment: Several comments were received requesting additional information on the criteria for determining the affordability of the parent share of cost.

Response: Boards have flexibility in establishing their parent share of cost policy. Boards are encouraged to review the labor market, housing costs and economic conditions in their workforce areas, and other factors relevant in determining general affordability when establishing this policy. If a Board finds that excessive terminations are occurring due to failure to pay the parent share of cost, the Board must reevaluate its policy of affordability of care in the local area and determine whether local economic conditions have changed in order to determine if the sliding fee scale in the parent share of cost policy is a barrier to assistance.

Comment: One comment was received regarding §809.13(c)(3)(A), asking TWC to clarify that termination of care due to failure to pay the parent share of cost is subject to local flexibility.

Response: Although board policies may vary in considering the circumstances and the factors in place to mitigate the issue before termination of services, boards must terminate care when an intentional violation of program rules related to paying parent share of cost has occurred.

Comment: One comment was received regarding keeping all Board-required policies within §809.13, Board Policies for Child Care Services.

Response: TWC understands the concern; however, §809.19(d) and §809.78(d) are intended to provide additional information that must be taken into consideration when developing the policy discussed in §809.13. For consistency with terminology, §809.78(d) is amended to remove "develop procedures to" in the rule. The rule now begins with "Boards shall ensure. . ."

§809.19. Assessing the Parent Share of Cost

ACF noted in the CCDF FAQ that 45 CFR §98.45(k)(3) states that a lead agency's sliding fee scale shall provide for "affordable family co-payments that are not a barrier to families receiving assistance under this part." Therefore, if lack of payment becomes a common occurrence, and lead agencies are frequently ending assistance to families for not paying their co-payment, the lead agency may want to reexamine its sliding fee scale to ensure that it is not in violation of this requirement by being a barrier to assistance.

Consistent with ACF guidance, §809.19(a)(1)(B) is amended to include a reexamination of the sliding fee scale if the Board finds a pattern of frequent terminations due to lack of co-payments. Additionally, §809.19(a)(1)(C) is amended to require Boards to set a parent share of cost that is affordable to all eligible families in the workforce area and not a barrier to families receiving assistance.

New §809.19(d) is added to provide necessary criteria to the process for terminating child care for failure to pay the parent share of cost, including requirements for:

--evaluating a family's financial circumstances for possible reduction of the parent share of cost before an early termination for nonpayment of parent share of cost;

--determining general affordability of the parent share of cost;

--maintenance of a list of all terminations due to failure to pay the parent share of cost;

--the Board's definition of what constitutes frequent terminations; and

--the Board's process for assessing the general affordability of its parent share of cost schedule.

New §809.19(e) is added to require Boards to reexamine their sliding fee scales if there are frequent terminations of care for lack of payment of the parent share of cost, and to adjust the fee schedule to ensure that fees are not a barrier to assistance for families at certain income levels.

New §809.19(f) is added to state that if a Board does not have a policy to reimburse providers when the parent fails to pay the parent share of cost, the Board has the option to require parents to repay the provider before being eligible for future child care services.

The current provision that prohibits a child's future eligibility when a parent owes a parent share of cost repayment to a Board if the Board has a policy in place that reimburses providers for parents' unpaid fees is retained. Given the ability to terminate care before 12 months when a parent fails to pay the parent share of cost, the financial risks associated with reimbursing providers will be substantially lower and more limited.

Subsections and paragraphs are relettered and renumbered as needed.

Comment: Several comments were received regarding §809.19(d)(2) and identifying the general criteria for determining affordability of a Board's parent share of cost.

Response: Boards have flexibility in establishing their parent share of cost policy. Boards are encouraged to review the labor market, housing costs and economic conditions in their workforce areas, and other factors relevant in determining general affordability when establishing this policy. If a Board finds that excessive terminations are occurring due to failure to pay the parent share of cost, the Board must reevaluate its policy of affordability of care in the local area and determine whether local economic conditions have changed in order to determine if the sliding fee scale in the parent share of cost policy is a barrier to assistance.

Comment: Several comments were received regarding §809.19(d)(3) and how to maintain a list of all terminations due to failure to pay the parent share of cost that includes family size, income, family circumstances, and the reason for termination.

Response: TWC is scheduling upgrades in The Workforce Information System of Texas (TWIST) to reinstate several termination codes to help track terminations and to assist Boards in identifying patterns of frequent terminations.

Comment: Several comments were received regarding §809.19(d)(4), which allows Boards to define what constitutes frequent terminations of care related to nonpayment of parent share of cost, and what parameters are used to determine the general affordability of a Board's parent share of cost schedule.

Response: Boards have flexibility in establishing their parent share of cost policy, including what constitutes frequent terminations of care related to nonpayment of parent share of cost. Boards are encouraged to review the labor market, housing costs and economic conditions in their workforce areas, and other factors relevant in determining general affordability and frequent terminations of care when establishing this policy. If a Board finds that excessive terminations are occurring due to failure to pay the parent share of cost, the Board must reevaluate its policy of affordability of care in the local area and determine whether local economic conditions have changed in order to determine if the sliding fee scale in the parent share of cost policy is a barrier to assistance.

Comment: One commenter asked if the requirement to evaluate and document a family's financial situation for extenuating circumstances that may affect affordability of the assessed parent share of cost, and a possible temporary reduction before the Board or its contractor may terminate care, must only happen if a parent requests a parent share of cost reduction.

Response: The Board must attempt to evaluate and document a family's financial situation for extenuating circumstances that may affect the family's ability to pay the assessed share of cost each time a parent is reported for failure to pay the share of cost.

Comment: One commenter asked if Boards can limit the number of parent share of cost reductions allowed in a 12-month eligibility period.

Response: The Board must assess the family's financial situation for extenuating circumstances each time the parent fails to pay the parent share of cost. Evaluations cannot be limited to a certain number of times per year. However, Board policy may establish how many parent-initiated parent share of cost reduction requests a family may make within an eligibility period.

Comment: Two commenters indicated that the evaluations and possible reduction of a parent share of cost based on a family's extenuating circumstances will increase Board expenditures for those Boards that have a policy of reimbursing providers for unpaid parent share of cost and may cause an undue burden on Boards that are already overenrolled.

Response: Reexamining and adjusting the sliding fee scale to ensure that parent fees are not a barrier to assistance for families at certain levels is a federal requirement. Board policy may establish how many parent-initiated parent share of cost reduction requests a parent is allowed to make within an eligibility period, however an assessment of the family's financial situation for extenuating circumstances must be completed each time the family is reported for non-payment.

Comment: One comment was received regarding §809.19(f) and whether late fees that a provider charges are included as fees that the Board can require a family to pay to the provider, along with any unpaid parent share of cost, before the family can be redetermined eligible for future child care services.

Response: No, late fees are not a part of the monthly cost of care assessed with the child care services eligibility determination. Late fees charged are outside the scope of child care services and are directly assessed to the parent by the provider. A provider may stipulate that a parent cannot return the child to care until late fees are paid, but for eligibility for future child care services, the repayment addressed in Board policy relates only to unpaid parent share of cost.

Comment: One commenter asked if it is allowable to inform parents in writing to notify child care services in advance of the monthly parent share of cost due date if the parents have difficulty paying their parent share of cost.

Response: Under §809.71(16), relating to parent rights, a Board shall ensure that the Board's child care contractor informs the parent in writing that the parent has the right to receive written notification of possible termination of child care services for failure to pay the parent share of cost, pursuant to §809.19(d). Although Boards have the flexibility to request that parents notify child care services in advance of the new month if the parents anticipate having difficulty in paying the parent share of cost, terminating child care due to a failure to notify the Board in advance would create a new category of intentional program violation and is not one of the types of intentional program violations defined in federal statute at §98.21(a)(5) or child care services rules at §809.13(c)(3)(A). An evaluation of the family's financial circumstances must still take place to determine any extenuating factors that may have affected the family's ability to pay. Additionally, if a failure to pay the parent share of cost is identified, the termination notice must still be sent to the family before care can be terminated.

Comment: One commenter asked if a family's inability to pay the parent share of cost automatically qualifies the family for a fee re-

duction, and about the level of effort that child care services staff would have to invest in gathering the documents to assess if a parent qualifies for a fee reduction. Additionally, the commenter asked how the delinquent share of cost will be resolved if a parent share of cost is already past due and a future reduction is applied. One commenter asked whether, if the family refuses to provide documentation to allow Boards to complete this evaluation, it will suffice for Boards to document their attempts and the family's noncooperation.

Response: Section 809.19(c)(3) requires Boards to establish a policy on assessment of a parent share of cost, to include information that failure to pay is a program violation subject to early termination of child care services. In their local policy, Boards have flexibility in providing direction on how to proceed if a family is not cooperative or responsive to the attempts to evaluate the family's financial situation for extenuating circumstances, pursuant to §809.19(d)(1). There are many possible ways a past due parent share of cost could be reduced or resolved, depending on when the non-payment is reported. TWC is issuing guidance on how to resolve a past due share of cost and a future fee reduction.

Comment: One commenter suggested that Boards should consider not retaining, but rather, changing their policies to require parents to repay the provider. Another commenter asked if the rule is reverting to not reimbursing providers, or if they can still reimburse providers and terminate care before the eligibility end date.

Response: The Child Care Services rules allow Boards to develop this policy. If a Board has a policy to reimburse providers for unpaid parent share of cost, the Board may attempt to recoup that money directly from the parents. If the Board does not have a policy to reimburse providers for the unpaid share of cost, it can still develop a policy to require that parents repay the unpaid share of cost of care directly to the provider before being eligible for future child care services. Failure to pay the parent share of cost is an intentional program violation that is subject to termination of services before the 12-month eligibility end date.

Comment: One commenter asked how many unpaid parent share of cost infractions are allowed before a Board can terminate care for this reason and how quickly the termination notice and appeal notice must be mailed after nonpayment of parent share of cost has occurred.

Response: Pursuant to §809.19(c)(3), Boards must develop a policy on assessment of the parent share of cost, to include information that failure to pay is a program violation, subject to early termination of child care services. Boards may include in their local policy the number or frequency of parent-initiated requests for a parent share of cost reduction. However, an assessment must occur each time the parent fails to pay the parent share of cost to determine if there are any extenuating circumstances. If a parent fails to pay the parent share of cost, there are no extenuating circumstances and the parent did not initiate a request for a parent share of cost reduction (per local Board policy), this is considered an intentional program violation and care must be terminated. Once the decision to terminate care has been reached, the termination letter and appeal notice must be mailed to the family, consistent with §809.74(a)(1).

Comment: One Board commented that §809.19(d)(4) requires Boards to establish a policy that must include, ". . . its process for assessing the general affordability of Board's parent share of cost schedule . . ." indicating that this Board's policies do not also include procedures, since any changes would require approval from the Board of Directors.

Response: TWC clarifies that the requirement is that Boards have a policy in place to assess the general affordability of the Board's parent share of cost schedule. This policy can include a requirement that the process is established by the contractor, or the Board can include specific requirements in Board policy that the Board wants the contractor to follow.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

TWC adopts the following amendments to Subchapter C.

§809.55. Waiting Periods for Reapplication

Current rules at §809.78(a)(3) establish a 12-month waiting period for children who exceed 65 absences. However, to add clarity, waiting period information is being moved to this stand-alone section. New §809.55 is added to require a mandatory waiting period of 60 calendar days before a family can reapply or be placed on a waiting list for child care services if care is terminated due to excessive unexplained absences, as described in §809.78(a)(1), or unpaid parent share of cost, as described in §809.19(d).

Furthermore, to more closely align with ACF guidance, the standard of 65 absences set forth in §809.78(a)(3) is changed to more than 40 unexplained absences in a 12-month eligibility period. Adding this clarification will prevent immediate reapplication for services when care is terminated.

However, to ensure full alignment between Child Care Services rules and the Choices program requirements, the mandatory waiting period will not apply to individuals who, during the 60-calendar day waiting period:

--become Choices participants who require child care to participate in the Choices program; or

--are on Choices sanction status and require child care to demonstrate participation in Choices.

Comment: One commenter expressed appreciation of reducing the waiting period for reapplication from 12 months to 60 days.

Response: TWC appreciates the comment.

Comment: Several commenters asked for clarification if the 60-day waiting period applies to the entire family or just the individual child. Another commenter asked for clarification regarding the waiting period for reapplication as it applies to termination of child care due to failure to pay the parent share of cost.

Response: Section 809.55(a) states, "A parent is ineligible to reapply for child care services or to be placed on the waiting list for services for 60 calendar days if the parent's eligibility or the child's enrollment is terminated . . ."

The 60-day waiting period applies to each individual child when care is terminated due to excessive unexplained absences. However, failure to pay parent share of cost will terminate the eligibility period for the entire family. Section 809.78(a)(1) is updated to clarify that termination of care occurs for the child due to excessive unexplained absences.

Comment: One commenter asked whether a child on a 60-day sit out who has a sibling in care must still sit out of care for 60 days before being placed back on the waiting list or can be brought back into care after 60 days. If the child is only out for

60 days, this will require tracking and could impact the number of children who are brought into care in the future.

Response: The 60-day sit out applies to the child, and the child must be out of care for 60 days before the child can be placed back on the waiting list. Some Boards may have a Board-established priority group for siblings of children already in care; however, the child must still sit out for 60 calendar days before being placed in that priority group.

Comment: Two commenters had questions related to the waiting period for reapplication as it applies to current and former Choices participants.

Comment: One commenter had a question on families (income-eligible and/or Choices) that were previously on a 12-month waiting period for absences exceeding 65 days within an eligibility period and how those customers can return to care, specifically, if receipt of Temporary Assistance for Needy Families and participation in Choices allow the family to reengage with child care services sooner.

Response: During the transition period between the old rule and the new rule, if the family is currently in a waiting period for re-application, the time frame will be reduced from the previous 12-month waiting period to the approved 60 calendar days. Families will not have their eligibility agreement interrupted during the current eligibility period, but when a consequence is applied, the new consequence timeframes will be applicable. Additional guidance will be provided through a WD Letter and updates to both the Child Care Services Guide and the Choices Guide.

Comment: One commenter asked if being placed on the waiting list and reapplying for services are the same thing, given that §809.55(a) states that "a parent is ineligible to reapply for child care services or to be placed on the waiting list for 60 calendar days if the parent's eligibility or the child's enrollment is terminated . . ."

Response: A family cannot be placed on the waiting list or have an eligibility determination completed until 60 calendar days have passed, if the parent's eligibility or the child's enrollment is terminated.

If a child or family is ineligible to be recertified based on the previous rules and is in a waiting period for reapplication, that time frame will be reduced from the previous 12-month waiting period to the approved waiting period of 60 calendar days. Families will not have their eligibility agreements interrupted during the current eligibility period, but when a consequence is applied, the new consequence time frames will be applicable.

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

TWC adopts the following amendments to Subchapter D.

§809.71. Parent Rights

New 45 CFR §98.21(a)(5)(i) states that lead agencies may terminate care in circumstances in which there have been "excessive unexplained absences," as defined by the state, and requires that before terminating care for excessive absences, multiple attempts be made to contact the family and provider, including notification of possible discontinuation of services.

Based on this guidance within the CCDF final rules, §809.71 is amended by adding paragraphs (15) and (16) to require that a parent must receive written notification that child care services may be terminated within a 12-month eligibility period if:

--a child has excessive unexplained absences, pursuant to §809.78(a)(1); or

--the family fails to pay the parent share of cost, pursuant to new §809.19(d).

Comment: One commenter asked for clarification of "multiple attempts," which must be made to contact the family and provider, including notification of possible discontinuation of assistance.

Response: Section 809.78(d)(1) instructs Boards to develop procedures to ensure that before terminating care for excessive unexplained absences, written notice is provided to the parent and provider at 15 and then 30 cumulative absences within a 12-month eligibility period. Boards have flexibility to determine what constitutes multiple attempts as long as the required two attempts identified in §809.78(d)(1) are documented.

Comment: One commenter asked about parent rights and notification requirements during the transition to terminating care during an eligibility period, and the effective dates of the notification, as it relates to implementing termination of care immediately and a parent's right to appeal.

Response: Section 809.71, Parent Rights, will be implemented in a manner so that families will not have their eligibility agreement interrupted during the current eligibility period. If a consequence must be applied, due to failure of the parent to meet the current eligibility agreements identified at initial determination (such as accruing more than 65 absences), it will not be applied during the current eligibility period. The parent will continue care, consistent with the agreement and notifications provided to the parent at initial eligibility determination. At the conclusion of that eligibility period, when the consequence is applied, the new consequence timeframes will be applicable.

Boards will not need to disrupt a current eligibility period to notify parents of the rule changes. Boards will implement the rule changes at the beginning of each family's new eligibility period. Boards retain the responsibility to notify parents of the right to appeal if the parent's eligibility or child's enrollment is denied, delayed, reduced, suspended or terminated, pursuant to §809.74(a)(1).

§809.75. Child Care during Appeal

Section 809.75 is amended by adding new subsection (b) to prohibit continuation of child care during an appeal if child care is terminated due to excessive unexplained absences, pursuant to §809.78, or nonpayment of parent share of cost, pursuant to §809.19.

Subsections are relettered as needed.

No comments were received for this section.

§809.78. Attendance Standards and Notice and Reporting Requirements

New 45 CFR §98.21(a)(5)(i) states that lead agencies may terminate care within a 12-month eligibility period in circumstances in which there have been excessive unexplained absences as defined by the state. Additionally, the preamble to the final rules states the following:

The definition of excessive should not be used as a mechanism for prematurely terminating eligibility and must be sufficient to allow for a reasonable number of absences. It is ACF's view that unexplained absences should account for at least 15 percent of a child's planned attendance before such absences are considered excessive. This 15 percent aligns generally with Head

Start's attendance policy and ACF will consider it as a benchmark when reviewing and monitoring this requirement.

Section 809.78(a)(1) is amended to require Boards to notify parents regarding attendance standards and possible termination of child care services during the 12-month eligibility period when there have been "excessive unexplained absences."

Consistent with federal guidance in the preamble and 45 CFR §98.21(a)(5)(i) regarding the 15 percent attendance standard, §809.78(a)(1)(A) and (B) are removed, and §809.78(a)(2) is amended to define acceptable attendance standards as no more than 40 unexplained absences within a 12-month eligibility period (which is 15 percent of a standard 260- to 262-calendar-day child care year, as recommended in the preamble of the CCDF final rule).

Current §809.78(a)(2) is amended to align with new federal rules at 45 CFR Part 98 regarding excessive unexplained absences.

Current §809.78(a)(3) is amended because 65 absences in a 12-month period is no longer an applicable standard. Additionally, the current 12-month waiting period for children who exceed 65 absences within an eligibility period is eliminated. This rule will be superseded by the ability to terminate care immediately after 40 absences, as well as by the reinstatement of a mandatory waiting period set forth in §809.55.

Section 809.78(a)(3)(A) - (C) are added to define "unexplained absences."

Section 809.78(c) is amended to explain that absences due to court-order visitation, chronic illness or a disability do not count toward the definition of "excessive unexplained absences" as described in §809.78(a).

Although 45 CFR §98.21(a)(5)(i) permits states to terminate care within a 12-month eligibility period for excessive unexplained absences, it also requires that before terminating care for excessive unexplained absences, multiple attempts must be made to contact the family and provider, including notification of the possible discontinuation of assistance.

Consistent with 45 CFR §98.21(a)(5)(i) and preamble guidance, §809.78(d) is added to require Boards to develop procedures to ensure that before terminating care for excessive unexplained absences pursuant to §809.78, the child care contractor makes multiple attempts to contact the family and the child care provider to determine why the child is absent and to explain the importance of regular attendance. The Board's procedures also must require documentation of attempts to provide notice to the parent and the child care provider of each child's general absences and the potential for termination of services, at reasonable times or through established communication channels, at a minimum when a child has reached five consecutive absences, and when a child reaches 15 and 30 general absences cumulatively within a 12-month eligibility period.

Subsections have been relettered as needed.

Comment: A recommendation to clarify whether in §809.78(a)(1) failure to meet attendance standards resulting in termination applies to the child or the family.

Response: TWC agrees with this recommendation and added the phrase "the child due to" to §809.78(a)(1) so the phrase now reads: "Failure to meet attendance standards described in paragraph (2) of this subsection may result in termination of care for the child due to excessive unexplained absences pursuant to subsection (d) of this section."

Comment: A recommendation was received to add "chronic" to the phrase "documented illness" in §809.78(a)(3)(A) to maintain consistency with the exceptions to unexplained absences discussed in §809.78(c).

Response: TWC agrees with this recommendation and added "chronic" to the phrase in §809.78(a)(3)(A).

Comment: Nine comments were received about §809.78(d)(1) regarding how and when the five consecutive absences will be counted and expressed concern about administrative burdens on staff, as well as concern for placing the responsibility on providers to report this attendance so that contractors can act in a timely manner as the fifth consecutive absence accrues.

Response: Based on the number and nature of comments received, as well as the unintended burden placed on providers to report absences, TWC is persuaded to remove the requirement of the written notification at five consecutive absences from the proposed rules. The written notification requirement at 15 and 30 absences is retained. Additionally, the parent will still receive the written termination notice 15 days before termination of services as well as the appeal notification.

Comment: Four comments were received regarding amending the requirement for "written notices" in §809.78(d)(1), specifically the requirements that the contractor must follow before terminating services. The comments referenced administrative and fiscal burdens that would occur with the increased written correspondence, as well as the staff time to research absences at those time frames. Additionally, some Boards use other methods, such as auto-dialers or automatic notification systems that log contact attempts.

Response: TWC encourages Boards to make full use of alternative formats to provide written notices that may reduce the fiscal burden. However, with the recommendation to remove written notification to parents at five consecutive absences, TWC retains the requirement to send written notification at 15 and 30 absences.

Comment: Several comments were received that recommended changes to TWIST to assist with appropriate tracking and monitoring of attendance standards.

Response: TWC is implementing a TWIST enhancement to assist with the tracking and monitoring of attendance standards.

Comment: Comments were received asking to define "multiple attempts" relating to §809.78(d)(2), which states that Boards shall ensure that the child care contractor documents multiple attempts to determine why the child is absent and to explain the importance of regular attendance before termination of services.

Response: Section 809.78(d)(1) instructs Boards to develop procedures to ensure that before terminating care for excessive unexplained absences, written notice is provided to the parent and provider at 15 and then 30 cumulative absences within a 12-month eligibility period. Boards have flexibility to determine what constitutes multiple attempts as long as the required two attempts identified in §809.78(d)(1) are documented.

Comment: Several comments were received regarding the absence notification letters and whether the current Board-defined time frames will suffice. Comments were also received regarding the content of the letters and whether it is appropriate and permissible to add language on the possibility of discontinuation of care in each of the letters. An additional comment was received regarding when to send the termination notice and the appeal

notification. One comment suggested sending notification letters at 15 and 30 unexplained absences, rather than 15 and 30 general absences. Finally, one comment suggested sending an additional letter at 40 absences to inform the parent that one more unexplained absence will result in termination of care.

Response: The purpose of the notification letters is to determine if the absences are explained due to documented chronic illness or court ordered visitation, pursuant to §809.73(a)(3)(A). The assessment of whether an absence is explained or unexplained must be completed before determining if care should end. The Board's attempts to notify the parent of the potential for termination of care must occur consistent with §809.78(d)(1), which requires notification letters to go out at 15 and 30 absences, and consistent with §809.71(a)(9) which requires the parent to receive written notification at least 15 calendar days before termination of child care services.

Comment: One commenter asked for a definition of "established communication channels." Another commenter asked about the requirement to contact providers when a child accrues absences.

Response: "Established communication channels" is a broad description to encompass the various methods that Boards may use to communicate with parents and providers. It is important to have communication with both the parent and the provider to identify any additional information about the child's absence that might change the "unexplained" determination. Consistent with §809.92(b)(4), providers shall follow attendance reporting and tracking procedures required by the Commission under §809.95, the Board, or if applicable, the Board's child care contractor. This provision has not changed and Boards retain the flexibility to have child care providers report absences at designated timeframes.

Comment: One commenter asked if, after contacting the provider, it is determined that the child was not absent, but the attendance was not recorded, the "absence" still accrues toward the allowable absence limit.

Response: If the attendance-recording device was functioning and available at that provider, but the parent did not use the device (that is, failed to record attendance for a day), that absence may accrue toward the absence limit.

Comment: One commenter asked if court-ordered visitation, chronic illness, or disability must be supported by documentation provided by the parent. Additionally, a commenter inquired about how to document missed attendance recording on or near the date of a doctor visit documented by a doctor's note and finally a request for clarification that the responsibility remains on the parent to ensure that an absence was due to an illness is documented correctly in the attendance recording system.

Response: Section 809.78(a)(3)(A) clarifies that unexplained absences include "any absence that is not due to a child's documented chronic illness or disability, or to a court-ordered custody or visitation agreement." TWC allows Boards the flexibility to determine the level of detail required to show the dates of the documented chronic illness, disability, or court-ordered custody or visitation agreement consistent with TWC policy reflected in §809.78(a)(3)(A). Parents maintain the responsibility to use the attendance recording system correctly, pursuant to §809.78(a)(5).

Comment: One commenter requested clarification on whether Boards are still able to terminate care when a child is absent for five consecutive days. Another commenter asked if outreach must continue at 10 total absences in a month.

Response: No, Boards are only able to terminate care due to absences when the child has more than 40 unexplained absences. Boards can terminate at the 41st unexplained absence, after attempts to notify the family and determine the reason for the child's absences are documented and the appropriate termination and appeal notices are provided. The Board's attempts to notify the parent of the potential for termination of care must occur consistent with §809.78(d)(1), which requires notification letters to go out at 15 and 30 absences. Boards have flexibility to determine additional notices that may be sent as long as the required two attempts identified in §809.78(d)(1) are documented.

Comment: Several commenters suggested that these changes to the number of allowable absences should apply at each family's recertification of eligibility, not in the middle of an eligibility period.

Response: TWC will issue a WD Letter that will address the implementation of the new rules as it relates to eligibility periods for children. Families will not have their eligibility agreement interrupted during the current eligibility period, but when a consequence is applied, the new consequence timeframes will be applicable.

Comment: One commenter asked TWC to confirm if termination of care due to excessive unexplained absences is subject to local flexibility.

Response: No, termination of care due to excessive unexplained absences is not subject to local flexibility, pursuant to 45 CFR §98.21(a)(5)(i) and §809.78(a)(2). Parents must be notified of how many absences constitutes excessive unexplained absences and that failure to adhere to the absence limitations may result in termination of care if absences are unexplained. Boards do retain the flexibility to locally establish processes for determining why a child is absent and explaining the importance of regular attendance.

Comment: One commenter asked whether, if the child has fewer than 40 absences and all parent share of cost payments have been made that were due and the family is redetermined to be eligible for the program and has another 12 months of eligibility authorized at the time the eligibility redetermination is completed, the contractor needs to continue to monitor absences and parent share of cost payments between the date the eligibility is determined and the date the new eligibility period starts, to ensure that there is no attendance standards violation in the interim.

Response: Once a new eligibility period is established, any absences accrued or parent share of cost violations after the new eligibility determination is made, but before the current eligibility period ends, will not affect the new eligibility period. TWC is updating the Child Care Services guide to address counting absences for children.

Comment: One commenter identified an increased cost to Boards to implement the changes. Specifically, multiple attempts to contact parents and providers to inquire about absences will increase staff time to handle the communication implied in these interactions.

Response: Attempting to notify the parent and provider of a child's excessive unexplained absences is a federal requirement. Boards currently send notification letters to parents due to a child's absences once certain amounts of absences have accrued. In the proposed rule, the Board's attempts to notify the

parent of the potential for termination of care must occur consistent with §809.78(d)(1), which requires notification letters to go out at 15 and 30 absences, and consistent with §809.71(a)(9) which requires the parent to receive written notification at least 15 calendar days before termination of child care services.

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

TWC adopts the following amendments to Subchapter E.

§809.93. Provider Reimbursement Section 809.93(b) is amended to remove "and §809.78(a)."

No comments were received for this section.

COMMENTS WERE RECEIVED FROM:

Ann Haines, Workforce Solutions East Texas

Teresa Watson, Workforce Solutions Heart of Texas

Julie Craig, Workforce Solutions Texoma

Marla Moon, Workforce Solutions Northeast Texas

Shawn Garrison, Workforce Solutions Alamo

Lisa Colyer, Workforce Solutions of West Central Texas

Shannon Richter, Workforce Solutions Rural Capital Area

David Baggerly, Workforce Solutions Gulf Coast

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.2

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308. Chapter 809.

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 June 14, 2018.

TRD-201802635
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: August 1, 2018
Proposal publication date: March 2, 2018
For further information, please call: (512) 689-9855

♦ ♦ ♦

SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §809.13, §809.19

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

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 June 14, 2018.

TRD-201802637
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: August 1, 2018
Proposal publication date: March 2, 2018
For further information, please call: (512) 689-9855

♦ ♦ ♦

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §809.55

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

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 June 14, 2018.

TRD-201802638
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: August 1, 2018
Proposal publication date: March 2, 2018
For further information, please call: (512) 689-9855

♦ ♦ ♦

SUBCHAPTER D. PARENT RIGHTS AND RESPONSIBILITIES

40 TAC §§809.71, 809.75, 809.78

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

§809.78. Attendance Standards and Notice and Reporting Requirements.

(a) A Board shall ensure that parents are notified of the following:

(1) Parents shall ensure that the eligible child attends on a regular basis consistent with the child's authorization for enrollment and attendance standards described in paragraph (2) of this subsection. Failure to meet attendance standards described in paragraph (2) of this subsection may result in termination of care for the child due to excessive unexplained absences pursuant to subsection (d) of this section.

(2) Meeting attendance standards for child care services consists of no more than 40 total unexplained absences in a 12-month eligibility period.

(3) Unexplained absences may include:

(A) Any absence that is not due to a child's documented chronic illness or disability, or to a court-ordered custody or visitation agreement;

(B) Any missed attendance recording that cannot be explained, except if the attendance reporting system is not available through no fault of the parent or provider; or

(C) Any denied or rejected attendance recording in which the parent does not contact the Agency's Child Care Services unit to report the issue.

(4) Notwithstanding paragraph (2) of this subsection, child care providers may end a child's enrollment with the provider if the child does not meet the provider's established policy regarding attendance.

(5) Parents shall use the attendance card to report daily attendance and absences.

(6) Parents shall not designate anyone under age 16 as a secondary cardholder, unless the individual is a child's parent.

(7) Parents shall not designate the owner, assistant director, or director of the child care facility as a secondary cardholder.

(8) Parents shall:

(A) ensure that the attendance card is not misused by secondary cardholders;

(B) inform secondary cardholders of the responsibilities for using the attendance card;

(C) ensure that secondary cardholders comply with these responsibilities; and

(D) ensure the protection of attendance cards issued to them or secondary cardholders.

(9) The parent or secondary cardholders giving the attendance card or the personal identification number (PIN) to another person, including the child care provider, is grounds for a potential fraud determination pursuant to Subchapter F of this chapter.

(10) Parents shall report to the child care contractor instances in which a parent's attempt to record attendance in the child care automated attendance system is denied or rejected and cannot be corrected at the provider site. Failure to report such instances may result in an unexplained absence counted toward the attendance standards described in paragraphs (2) and (3) of this subsection.

(b) Boards shall ensure that parents sign a written acknowledgment indicating their understanding of the attendance standards and reporting requirements at each of the following stages:

(1) initial eligibility determination; and

(2) each eligibility redetermination, as required in §809.42(b).

(c) Boards shall ensure that absences due to a child's documented chronic illness or disability or court-ordered visitation are not counted in the number of unexplained absences in subsection (a)(2) and (3) of this section.

(d) Boards shall ensure that before terminating care pursuant to §809.78(a)(1), the child care contractor:

(1) provides written notice to the parent and the child care provider at reasonable times through established communication channels of the child's absences and the potential termination of services, at a minimum when a child reaches 15, and 30 general absences cumulatively within a 12-month eligibility period; and

(2) documents that multiple attempts were made, as described in paragraph (1) of this subsection, to determine why the child is absent and to explain the importance of regular attendance.

(e) Where a child's enrollment has been ended by a provider in subsection (a)(4) of this section, Boards shall work with the parent to place the otherwise eligible child with another eligible provider.

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 June 14, 2018.

TRD-201802641
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: August 1, 2018
Proposal publication date: March 2, 2018
For further information, please call: (512) 689-9855

♦ ♦ ♦

SUBCHAPTER E. REQUIREMENTS TO PROVIDE CHILD CARE

40 TAC §809.93

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

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 June 14, 2018.

TRD-201802642
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: August 1, 2018
Proposal publication date: March 2, 2018
For further information, please call: (512) 689-9855

♦ ♦ ♦

Aaron Guzman
11th Grade

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §311.5(d)

Type of License	1 Year Fee	2 Year Fee	3 Year Fee
Adoption Program Personnel	$ 0 [~~25~~]		
Announcer	$ 35		
Apprentice Jockey	$ 75		
Assistant Farrier/Plater/Blacksmith	$ 25		
Assistant Starter	$ 25		
Assistant Trainer	$ 100		
Assistant Trainer/Owner	$ 100		
Association Assistant Management	$ 50		
Association Management Personnel	$ 75		
Association Officer/Director	$ 100		
Association Other	$ 75		
Association Staff	$ 35		
Association Veterinarian	$ 75		
Authorized Agent	$ 15		
Chaplain	$ 0 [~~25~~]		
Chaplain Assistant	$ 0 [~~25~~]		
Equine Dental Provider	$100		
Exercise Rider	$ 25		
Farrier/Plater/Blacksmith	$ 75		
Groom/Exercise Rider	$ 25		
Groom/Hot Walker	$ 25		
Groom/Pony Person	$ 25		
Jockey	$ 100	$200	$300
Jockey Agent	$ 100		
Kennel	$ 75		
Kennel Helper	$ 25		
Kennel Owner	$ 100	$ 200	$ 300
Kennel Owner/Owner	$ 100	$ 200	$ 300
Kennel Owner/Owner-Trainer	$ 100	$ 200	$ 300
Kennel Owner/Trainer	$ 100	$ 200	$ 300

Lead-Out	$ 25		
Maintenance	$ 35		
Medical Staff	$ 35		
Miscellaneous	$ 25		
Multiple Owner	$ 35	$ 70	$ 105
Mutuel Clerk	$ 35		
Mutuel Other	$ 35		
Owner	$ 100	$ 200	$ 300
Owner-Trainer	$ 100	$ 200	$ 300
Pony Person	$ 25		
Racing Industry Representative	$ 100		
Racing Industry Staff	$ 30		
Racing Official	$ 50		
Security Officer	$ 30		
Stable Foreman	$ 50		
Tattooer	$ 100		
Test Technician	$ 0 [~~25~~]		
Trainer	$ 100	$ 200	$ 300
Training Facility Employee	$ 30		
Training Facility General Manager	$ 50		
Valet	$ 25		
Vendor Concessionaire	$ 100		
Vendor/Concessionaire Employee	$ 30		
Vendor/Totalisator	$ 500		
Vendor/Totalisator Employee	$ 50		
Veterinarian	$ 100	$ 200	$ 300
Veterinarian Assistant	$ 30		

Figure: 26 TAC §749.3391(a)

Type of Information:	Including:
(1) Abuse or neglect history:	Physical, sexual, or emotional abuse history.
(2) Health history:	(A) Current health status; (B) Birth history, neonatal history, and other medical, dental, psychological, or psychiatric history, including: (i) Available results and diagnoses of any medical or dental examinations, including whether the child has been diagnosed with fetal alcohol spectrum disorder; (ii) Available results and diagnoses of any psychological, psychiatric, or social evaluations; (iii) Whether the child's birth mother consumed alcohol during pregnancy; and (iv) Any health history that is known by the Department of Family and Protective Services; and (C) Immunization record.
(3) Social history:	Information about past and existing relations among the child and the child's siblings, birth parents, extended family members, and other persons who have had physical possession of or legal access to the child.
(4) Educational history:	(A) Enrollment and performance in educational institutions; (B) Results of educational testing and standardized tests; and (C) Special educational needs, if any.

Type of Information:	Including:
(5) Family history:	Information about the child's birth parents, maternal and paternal grandparents, other children born to either of the child's birth parents, and extended family members, including their: (A) Health and medical history, including any information obtained in the medical history report and information regarding genetic diseases or disorders; (B) Current health status; (C) If deceased, cause of and age of death; (D) Height, weight, eye, and hair color; (E) Nationality and ethnic backgrounds; (F) General levels of educational and professional achievements; (G) Religious backgrounds; (H) Results of any psychological, psychiatric, or social evaluations, including the date of any such evaluation, any diagnosis, and a summary of any findings; (I) Any criminal conviction record relating to the following: (i) A misdemeanor or felony classified as an offense against the person or family; (ii) A misdemeanor or felony classified as public indecency; or (iii) A felony violation of a statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act; and (J) Any information necessary to determine whether the child is entitled to, or otherwise eligible for, state or federal financial, medical, or other assistance.

Figure: 26 TAC §749.3391(b)

Type of Information:	Including:
(1) History of previous placements:	Information about the child's previous placements, including the date(s) and reason(s) for placement.
(2) Child's legal status:	Information regarding the child's legal status.
(3) Child's understanding of adoptive placement:	Information regarding the child's understanding of adoptive placement.

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.

Texas State Affordable Housing Corporation

Notice of Request for Proposals

Notice is hereby given of a Request for Proposals (RFP) by the Texas State Affordable Housing Corporation (TSAHC) to qualified consulting firms to develop an application for 2018 Capital Magnet Fund (CMF) grant funding on behalf of TSAHC. The CMF is an initiative of the Community Development Financial Institutions (CDFI) Fund that provides grant funding on a competitive basis to support affordable housing and community revitalization projects for the benefit of low-income persons. A copy of the RFP can be found at http://www.tsahc.org/about/plans-reports.

The deadline for submissions in response to this RFP is **Friday, July 13, 2018 at 5:00 p.m. CDT.** Responses should be emailed to Katie Claflin at kclaflin@tsahc.org. Faxed responses will not be accepted. For questions or comments, please contact Katie Claflin at (512) 334-2152 or by email at kclaflin@tsahc.org.

TRD-201802779
David Long
President
Texas State Affordable Housing Corporation
June 20, 2018

♦ ♦ ♦

Office of the Attorney General

Texas Water Code §49.1025 Voter Affidavit

Section 49.1025 of the Texas Water Code requires an election officer for a water district confirmation election and any other jointly held election to provide the voter a form of affidavit to be completed. The voter affidavit must include certain statements, including confirmation that the voter is not a developer of the property in the district and has not received monetary consideration from the developer for his or her vote in the election. Section 49.1025 requires the Office of the Attorney General to prescribe the form of the voter affidavit. The form of affidavit was originally published in the *Texas Register* on December 29, 2017, (42 TexReg 7772). In consultation with the Secretary of State's Office, some changes have been made and a Spanish translation has been added. The updated form of the Voter Affidavit is as follows:

VOTER AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF _____ §

I, _____, Swear or Affirm that:
Name of Voter

1. My Residence is _____,
Address
which is located within the territory of _____.
District Name

2. I moved into the District on _____, and I established my Residence within the
Date
District for at least thirty (30) days prior to the date of this election.

3. I understand that:
   a. "Residence" means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence. (*Texas Election Code Section 1.015(a)*); and
   b. A person does not acquire a Residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home. (*Texas Election Code Section 1.015(d)*.

4. On _____, I voted in the _____ election(s)
Date Description of Election(s)
held by this district.

5. I am a duly registered voter in _____ County, Texas. My voter
County Name
registration was effective as of the _____ day of _____, 20___. My voter
Day Month Year
registration number is _____. True and correct copies of my
Registration Number
voter registration certificate and another form of identification acceptable under state law, if available, are attached to this affidavit. (*Texas Election Code Section 63.0101*). To the best of my knowledge, I believe that my voter registration is effective on the date of this election.

6. I am 18 years or older and a citizen of the United States of America. *(Texas Election Code Section 11.002(a)(1),(2)).*

7. I have not been found by final judgment of a court to be totally mentally incapacitated or partially mentally incapacitated without the right to vote. *(Texas Election Code Section 11.002(a)(3)).*

Form of Affidavit Pursuant to § 49.1025 Tex. Water Code

8. I have not been finally convicted of a felony or, if so convicted, I have fully discharged my sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court, or have been pardoned or otherwise released from the resulting disability to vote. *(Texas Election Code Section 11.002(a)(4),(b)).*

9. A "Developer of property in the District" means any person who owns land located within the District, and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto. (*Texas Water Code Section 49.052(d)*).

   I am not a Developer of property in the District, related within the third degree of affinity or consanguinity to a Developer of property in the District, or an employee of a Developer of property in the District. I have not received monetary consideration from a Developer of property in the District for my vote in this election.

10. I understand that making a false statement under oath, with intent to deceive and with knowledge of the statement's meaning, is a crime. (*Texas Penal Code Section 37.02).*

By signing this affidavit, I swear or affirm, on the ____ day of _____, 20___, that the above information and statements are true.

_____
Signature of Voter

Sworn to and subscribed before me this _____ day of _____, 20___.

[Notary Seal or Name and Title of Election Officer]

_____
Notary Public, State of Texas, or Election Officer (other than Voter identified above)

Form of Affidavit Pursuant to § 49.1025 Tex. Water Code

DECLARACIÓN JURADA PARA VOTANTE

ESTADO DE TEXAS §
§
CONDADO DE _____ §

Yo, _____, Juro o Afirmo que:
Nombre del Votante

1. Mi Residencia es _____,
Dirección
ubicada dentro del territorio de _____.
Nombre del Distrito

2. Me mudé al Distrito el _____, y establecí mi Residencia dentro
Fecha (Mes/Día/Año)
del Distrito por lo menos treinta (30) días antes de la fecha de esta elección.

3. Entiendo que:
   a. "Residencia" significa domicilio, es decir, el hogar y lugar fijo de habitación al cual uno tiene la intención de regresar después de una ausencia temporal. (*Código de Elecciones de Texas Sección 1.0155(a)*); y
   b. Una persona no adquiere una Residencia en un lugar al que la persona ha venido solo por fines temporales y sin intención de hacer que ese lugar sea el hogar de la persona. (*Código de Elección de Texas Sección 1.015(d)).*

4. El _____, yo voté en la elección(es) de _____
Fecha (Mes/Día/Año) Descripción de la Elección(es)
que se llevó acabo en este distrito.

5. Soy un votante debidamente registrado en el Condado _____ de Texas. Mi
Nombre del Condado
registro de votante fue efectivo a partir del _____ día de _____ del 20___. Mi número
Día Mes Año
de registro de votante es _____. Copias verdaderas y correctas de mi
Número de Registración
certificado de registro de votante y otra forma de identificación aceptable bajo la ley estatal, si está disponible, están adjuntas a esta declaración jurada. (*Código de Elección de Texas Sección 63.0101*). A mi mejor saber, creo que mi registro de votante está efectivo en la fecha de esta elección.

6. Tengo 18 años de edad o más y soy ciudadano de los Estados Unidos de América. *(Código de Elección de Texas Sección 11.002(a)(1),(2)).*

Formulario de Declaración Jurada para Votante, Conforme a § 49.1025 Código de Agua de Texas

7. No he sido declarado por dictamen de un tribunal de ser totalmente discapacitado mentalmente o parcialmente discapacitado mentalmente sin derecho al voto. *(Código de Elección de Texas Sección 11.002(a)(3)).*

8. No he sido finalmente condenado de un delito grave o, si fui declarado culpable, he cumplido mi sentencia totalmente, incluyendo cualquier término de encarcelamiento, libertad vigilada o supervisión, o completado un periodo de libertad condicional ordenada por un tribunal, o he sido perdonado o de otra manera liberado de la incapacidad resultante para votar. *(Código de Elección de Texas Sección 11.002(a)(4),(b)).*

9. "Un desarrollador inmobiliario en el Distrito" significa cualquier persona que posea terreno ubicado dentro del Distrito, y que haya dividido o ha propuesto dividir el terreno en dos o más partes con el fin de establecer cualquier subdivisión o cualquier extensión de terreno o cualquier adición a cualquier pueblo o ciudad, o para el establecimiento de lotes suburbanos o lotes de construcción para edificios, o cualquier lotes, calles, callejónes, o parques u otras porciones para uso público, o para el uso de los compradores o propietarios de los lotes enfrente o adjuntos a ellos. (*Código de Agua de Texas Sección 49.052(d)*).

   No soy Desarrollador inmobiliario en el Distrito, relacionado dentro del tercer grado de afinidad o consanguinidad a un Desarrollador inmobiliario en el Distrito, o ni un empleado de un Desarrollador inmobiliario en el Distrito. No he recibido consideración monetaria de un Desarrollador inmobiliario en el Distrito por mi voto en esta elección.

10. Yo entiendo que hacer una declaración falsa bajo juramento, con la intención de engañar y con conocimiento del significado de la declaración, es un crimen. (*Código Penal de Texas Sección 37.02*).

Al firmar esta declaración, juro y afirmo, que el ____ día _____ de 20___, la información y las declaraciones anteriores son verdaderas.

_____
Firma del Votante

Suscrito y jurado ante mi este _____ día de _____ del 20_____.

[Sello del Notary Public o Nombre y Título del Oficial de Elecciones]

_____Notary Public, Estado de Texas, u Oficial de Elecciones (aparte del Votante identificado arriba)

Formulario de Declaración Jurada para Votante, Conforme a § 49.1025 Código de Agua de Texas

TRD-201802652
Amanda Crawford
General Counsel
Office of the Attorney General
June 14, 2018

♦ ♦ ♦

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2018

The additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will be abolished effective June 30, 2018 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Hickory Creek (Denton Co)	2061186	.017500	.080000

The additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduced to 1/4 percent effective July 1, 2018 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Lowry Crossing (Collin Co)	2043214	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be reduced by 1/8 percent effective June 30, 2018 and an additional 1/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective July 1, 2018 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Hooks (Bowie Co)	2019054	.020000	.082500

A 1/2 percent special purpose district sales and use tax will become effective July 1, 2018 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Lowry Crossing Municipal Development District	5043526	.005000	SEE NOTE 1

A 1 1/2 percent special purpose district sales and use tax will become effective July 1, 2018 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Crosswinds at South Lake Special Improvement District	5015646	.015000	SEE NOTE 2

NOTE 1: The Lowry Crossing Municipal Development District has the same boundaries as the Lowry Crossing extra-territorial jurisdiction, which includes the city of Lowry Crossing.

NOTE 2: The Crosswinds at South Lake Special Improvement District is located in the southern portion of Bexar County. The district is located entirely within the San Antonio MTA, which has a transit sales and use tax. The district does not include any area within the city of San Antonio or the Bexar County Emergency Services District No. 5. The unincorporated area of Bexar County in ZIP Code 78073 is partially located in the Crosswinds at South Lake Special Improvement District. Contact the district representative at 210-349-6484 for additional boundary information.

TRD-201802767

William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
June 14, 2018

♦ ♦ ♦

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 06/25/18 - 07/01/18 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/25/18 - 07/01/18 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/18 - 07/31/18 is 5.00% for Consumer/Agricultural/Commercial credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/18 - 07/31/18 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-201802760
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
June 19, 2018

♦ ♦ ♦

Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a change to its name was received from Texas Workforce Credit Union, San Antonio, Texas. The credit union is proposing to change its name to Alamo City Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201802769
Harold E. Feeney
Commissioner
Credit Union Department
June 20, 2018

♦ ♦ ♦

Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Mobility Credit Union, Irving, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school or work in Collin County, to be eligible for membership in the credit union.

An application was received from SPCO Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees and members of Rosenberg Railroad Museum, to be eligible for membership in the credit union.

An application was received from Texell Credit Union, Temple, Texas to expand its field of membership. The proposal would permit Texas residents who are existing members of or who join the Texas Consumer Council, to be eligible for membership in the credit union.

An application was received from Brazos Valley Schools Credit Union, Katy, Texas to expand its field of membership. The proposal would permit persons who live, worship, work or attend school within the geographic boundaries of Sealy ISD, Royal ISD, Bellville ISD, Hempstead ISD, and Waller ISD, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas to expand its field of membership. The proposal would permit faculty, staff and students of the University of Houston-Downtown located at One Main Street, Houston, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201802768
Harold E. Feeney
Commissioner
Credit Union Department
June 20, 2018

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Merger or Consolidation - Approved

Houston Musicians Federal Credit Union, (Houston) and Space City Credit Union (Houston) - See *Texas Register* issue dated June 30, 2017.

TRD-201802766
Harold E. Feeney
Commissioner
Credit Union Department
June 20, 2018

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Deep East Texas Council of Governments

Solicitation for Public Comment

Notice is hereby given that the Deep East Texas Council of Governments (DETCOG) is seeking input on the Proposed Method of Distribution (MOD) for $35,867,032 in Local Buyout/Acquisition Funds and $7,464,224 in Local Infrastructure funds. These are Community Development Block Grant Disaster Recovery Funds related to Presidential Disaster Declaration 4332-DR (Hurricane Harvey).

The Proposed Method of Distribution may be viewed on the DETCOG website at www.detcog.org. Copies can also be obtained from the DETCOG office at 210 Premier Drive, Jasper, Texas, or from the County Judge's Offices in Jasper, Newton, Polk, Sabine, San Augustine, San Jacinto, and Tyler Counties.

Written and oral comments regarding the MOD will be taken at a public hearing scheduled for Thursday, June 28, 2018, at 12:30 p.m., at the Nacogdoches County Courthouse Annex, 203 West Main Street, Nacogdoches, Texas.

Additional written comments will be accepted by DETCOG from June 13th until 4:30 p.m. on June 27th. Address all comments to: Bob Bashaw, Regional Planner, 210 Premier Drive, Jasper, Texas 75951. Comments may also be submitted by fax to (409) 384-5390 or by email to Bob.Bashaw@detcog.org.

DETCOG will provide for reasonable accommodations for persons attending DETCOG functions. Requests from persons needing special accommodations should be received by DETCOG staff 24 hours prior to the function.

The public hearing will be conducted in English and requests for language interpreters or other special communication needs should be made at least 48 hours prior to a function. Please call (409) 384-5704 ext. 5353 for assistance.

For information about this posting, please call (409) 384-5704 ext. 5302.

Solicitud de comentario público

Se da aviso de que el Consejo de Gobiernos del Este de Texas (DETCOG) está buscando información sobre el Método de Distribución Propuesto (MOD) por $35,867,032 en Fondos de Adquisición/Adquisición Local y $7,464,224 en fondos de Infraestructura Local. Estos son los Fondos de Recuperación de Desastres de Subsidios en Bloque de Desarrollo Comunitario relacionados con la Declaración Presidencial de Desastres 4332-DR (Huracán Harvey).

El Método de Distribución Propuesto se puede ver en el sitio web de DETCOG en www.detcog.org. Las copias también pueden obtenerse en la oficina de DETCOG en 210 Premier Drive, Jasper, Texas, o en las Oficinas del Juez del Condado en los condados de Jasper, Newton, Polk, Sabine, San Augustine, San Jacinto y Tyler.

Los comentarios escritos y orales sobre el MOD se tomarán en una audiencia pública programada para el jueves 28 de junio de 2018 a las 12:30 p.m., en el anexo del tribunal del condado de Nacogdoches, 203 West Main Street, Nacogdoches, Texas.

DETCOG aceptará comentarios adicionales por escrito desde el 13 de junio hasta las 4:30 p.m. el 27 de junio. Dirija todos los comentarios a: Bob Bashaw, Regional Planner, 210 Premier Drive, Jasper, Texas 75951. Los comentarios también pueden enviarse por fax al (409) 384-5390 o por correo electrónico a Bob.Bashaw@detcog.org.

DETCOG proporcionará adaptaciones razonables para las personas que asistan a las funciones de DETCOG. Las solicitudes de personas que necesitan adaptaciones especiales deben ser recibidas por el personal de DETCOG 24 horas antes de la función.

La audiencia pública sera conducido en inglés y solicitudes de intérpretes de idiomas otras necesidades especiales de comunicación debe hacerse al menos 48 horas antes de una función. Por favor llame al (409) 384-5704 ext. 5353 para asistencia.

Para obtener información sobre esta publicación, llame al (409) 384-5704 ext. 5302.

TRD-201802649
Lonnie Hunt
Executive Director
Deep East Texas Council of Governments
June 14, 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 31, 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 31, 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: Broussard Brothers, LLC dba Circle B; DOCKET NUMBER: 2018-0043-PST-E; IDENTIFIER: RN101892511; LOCATION: Bellevue, Montague 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 UST 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: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: CHILTON Water Supply And Sewer Service Corporation; DOCKET NUMBER: 2018-0297-MWD-E; IDENTIFIER: RN102285814; LOCATION: Chilton, Falls County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010811001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $7,350; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Runge; DOCKET NUMBER: 2018-0355-MLM-E; IDENTIFIER: RN101424083; LOCATION: Runge, Karnes County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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; 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 §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(f)(2) and (3)(A)(iii) and (D)(ii), by failing to maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the facility's three active wells; and 30 TAC §288.20(a) and §288.30(5)(B) and TWC §11.1272, by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $1,335; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Corix Utilities (Texas) Incorporated; DOCKET NUMBER: 2018-0346-MWD-E; IDENTIFIER: RN102334893; LOCATION: Bastrop, Bastrop County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC §26.121(a)(1), and Texas Pollution Discharge Elimination System Permit Number WQ0013977001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(5) COMPANY: Dallas Fort Worth International Airport Board; DOCKET NUMBER: 2018-0223-IWD-E; IDENTIFIER: RN100213990; LOCATION: Tarrant and Dallas Counties; TYPE OF FACILITY: international airport; RULES VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001441000, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of industrial waste into or adjacent to any water in the state; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Hana Travel Plaza Winfield, Incorporated; DOCKET NUMBER: 2018-0239-PST-E; IDENTIFIER: RN108928938; LOCATION: Winfield, Titus 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; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $8,465; ENFORCEMENT COORDINATOR: Berenice Munoz, (512) 239-2617; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Jose A. Cuevas; DOCKET NUMBER: 2017-1008-PST-E; IDENTIFIER: RN107701385; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: out-of-service underground storage tank system; RULES VIOLATED: 30 TAC §334.6(b)(2) and §334.55(a)(1), by failing to provide notice to the agency at least 30 days prior to initiating the permanent removal of tanks from the ground; and 30 TAC §334.55(a)(3) and §334.401(a) and (b), by failing to have the permanent removal from service of an underground storage tank conducted by qualified personnel possessing the required license or certification in a manner designed to minimize the possibility of any threats to human health and safety or the environment; PENALTY: $5,707; ENFORCEMENT COORDINATOR: John Paul Fennell, (512) 239-2616; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: LANTRIPS CUSTOM HOMES, INCORPORATED; DOCKET NUMBER: 2018-0677-WQ-E; IDENTIFIER: RN110303666; LOCATION: Tuscola, Taylor County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Claudia Corrales, (432) 620-6138; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Midkiff Avenue RV Park, LLC; DOCKET NUMBER: 2018-0370-PWS-E; IDENTIFIER: RN107349532; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: $660; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: Navasota Independent School District; DOCKET NUMBER: 2018-0234-MWD-E; IDENTIFIER: RN104791876; LOCATION: Grimes County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014662001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(1) and (19) and §319.1, and TPDES Permit Number WQ0014662001, Permit Conditions Number 1.a, by failing to accurately complete Discharge Monitoring Reports; 30 TAC §305.125(1), and TPDES Permit Number WQ0014662001, Sludge Provisions, Section III(G), by failing to timely submit the annual sludge report; TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0014662001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; TWC §26.0301(a), 30 TAC §§30.331(b), 30.350(d) and (e), and 305.125(1), and TPDES Permit Number WQ0014662001, Other Requirements

Number 1, by failing to employ or contract one or more licensed wastewater treatment facility operators holding the appropriate level of license to operate a wastewater treatment facility; 30 TAC §305.65 and §305.125(1), and TPDES Permit Number WQ0014662001, Permit Conditions Number 4.c, by failing to timely submit a permit renewal application at least 180 days before the expiration date of the effective permit; 30 TAC §305.125(1) and (9)(A), and TPDES Permit Number WQ0014662001, Monitoring and Reporting Requirements Number 7.c, by failing to report any effluent violation which deviates from the permitted limitation by more than 40% in writing to the Waco Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance event; and 30 TAC §305.125(1), and TPDES Permit Number WQ0014662001, Sludge Provisions, Section III(G), by failing to accurately complete the annual sludge report; PENALTY: $16,800; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: PATTERSON WATER SUPPLY, LLC; DOCKET NUMBER: 2018-0158-PWS-E; IDENTIFIER: RN101251718; LOCATION: Azle, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; and 30 TAC §290.46(u), by failing to plug an abandoned public water supply well in accordance with 16 TAC Chapter 76, or submit the test results proving that the well is in a non-deteriorated condition; PENALTY: $200; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Pecan Grove Mobile Home Park, LLC; DOCKET NUMBER: 2018-0116-PWS-E; IDENTIFIER: RN101450526; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate (as nitrogen); PENALTY: $660; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(13) COMPANY: Pioneer Natural Resources USA, Incorporated; DOCKET NUMBER: 2018-0125-AIR-E; IDENTIFIER: RN100223452; LOCATION: Masterson, Moore County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of the emissions event; and 30 TAC §106.6(c), Permit by Rule Registration Number 47978, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $4,618; Supplemental Environmental Project offset amount of $1,847; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: Premium Waters, Incorporated; DOCKET NUMBER: 2018-0378-IWD-E; IDENTIFIER: RN105975452; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: water bottling plant; RULES VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004937000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $7,750; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: RBT and NMJ INCORPORATED dba Ambler Express; DOCKET NUMBER: 2017-1738-PST-E; IDENTIFIER: RN102781820; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,562; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(16) COMPANY: REWA INCORPORATED dba Tom Bean Food; DOCKET NUMBER: 2018-0421-PST-E; IDENTIFIER: RN103027173; LOCATION: Tom Bean, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,557; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: S. M. MOON INVESTMENTS CORPORATION dba Texaco Food Mart; DOCKET NUMBER: 2018-0123-PST-E; IDENTIFIER: RN100709807; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.51(a)(6) and TWC §26.3475(c)(2), by failing to assure that all installed spill and overfill prevention devices are maintained in good operating condition; PENALTY: $3,251; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: SMA Ventures, LLC dba Salt Creek Grocery; DOCKET NUMBER: 2018-0182-PST-E; IDENTIFIER: RN101557502; LOCATION: Springtown, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; 30 TAC §334.48(a), by failing to ensure the underground storage tank (UST) system is operated, maintained, and managed in a manner that will prevent releases of regulated substances; and 30 TAC §334.49(a)(2) and TWC §26.3475(d), by failing to ensure that the corrosion protection system is operated and maintained in a manner that will provide continuous protection to all underground metal components of the UST system; PENALTY: $4,776; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: SUNDOWN RANCH, INCORPORATED; DOCKET NUMBER: 2018-0403-MWD-E; IDENTIFIER: RN108792565; LOCATION: Van Zandt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015423001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: $18,125; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: THE REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS; DOCKET NUMBER:

2018-0089-PWS-E; IDENTIFIER: RN101250512; LOCATION: Bandera, Bandera County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.42(l), by failing to compile and keep up-to-date a thorough plant operations manual for operator review and reference; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data for Well Number 2, as defined in 30 TAC §290.41(c)(3)(A), for as long as the well remains in service; PENALTY: $200; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: TPC Group LLC; DOCKET NUMBER: 2017-1625-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.20(1) and §122.143(4), 40 Code of Federal Regulations (CFR) §60.665(l), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1598, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 1.A, by failing to submit the initial and semiannual 40 CFR Part 60, Subpart NNN reports for distillation columns; 30 TAC §101.20(1) and §122.143(4), 40 CFR §60.705(l), THSC, §382.085(b), and FOP Number O1598, GTC and STC Number 1.A, by failing to submit the initial and semiannual 40 CFR Part 60, Subpart RRR reports for reactors; and 30 TAC §117.335(c) and §122.143(4), THSC, §382.085(b), and FOP Number O1598, GTC and STC Number 1.A, by failing to conduct the initial and annual Relative Accuracy Test Audits; PENALTY: $85,078; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Trenton Grain, LLC; DOCKET NUMBER: 2018-0126-AIR-E; IDENTIFIER: RN100767110; LOCATION: Tom Bean, Grayson County; TYPE OF FACILITY: grain storage and loading; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air contaminants; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: UNIVERSAL FINANCE CORPORATION dba LBJ Food Mart Chevron; DOCKET NUMBER: 2018-0337-PST-E; IDENTIFIER: RN101866796; LOCATION: Dallas, Dallas 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 tank (UST) 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: $5,850; ENFORCEMENT COORDINATOR: John Paul Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Utex Industries, Incorporated; DOCKET NUMBER: 2018-0690-WQ-E; IDENTIFIER: RN110305570; LOCATION: Venus, Johnson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Victoria County Water Control and Improvement District Number 1; DOCKET NUMBER: 2018-0315-PWS-E; IDENTIFIER: RN101397735; LOCATION: Bloomington, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; and 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 along with certification that the consumer notification has been distributed for the January 1, 2015 - December 31, 2017, monitoring period; PENALTY: $224; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201802754
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
June 19, 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 TPDES Permit for Municipal Wastewater New Permit No. WQ0015642001

Aqua Texas, Inc., 1106 Clayton Lane, Suite 400W, Austin, Texas 78723, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015642001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. TCEQ received this application on January 17, 2018.

This combined notice is being issued to correct the discharge route description in the NORI.

The facility will be located approximately 3,025 feet northwest of the intersection of Farm-to-Market Road 359 and Farm-to-Market Road 723, in Fort Bend County, Texas 77406. The treated effluent will be discharged **directly to Jones Creek, which is a portion of Upper Oyster Creek in Segment Number 1245** of the Brazos River Basin. The designated uses for Segment Number 1245 are intermediate aquatic life use, public water supply, and primary contact recreation. In accordance with Title 30 Texas Administrative Code Section 307.5 and the TCEQ implementation procedures (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. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Jones Creek or Upper Oyster Creek, which has been identified as having intermediate aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the

site or facility's general location is provided as a public courtesy, and is not part of the application or notice. For the exact location, refer to the application. Link: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.638333&lng=-95.816944&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 George Memorial Library, 1001 Golfview Drive, Richmond, Texas.

PUBLIC COMMENT / PUBLIC MEETING.

A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

TUESDAY, JULY 24, 2018, at 7:00 p.m.

City of Fulshear Community Center

6920 Katy-Fulshear Road

Fulshear, Texas 77441

INFORMATION.

Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/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. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

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.

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 a 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 may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

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.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality , P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html within 30 days from the date of newspaper publication of this notice.

INFORMATION AVAILABLE ONLINE.

For details about the status of the application, visit the Commissioner's Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

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. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Aqua Texas, Inc. at the address stated above or by calling Ms. Shelley Young, P.E., WaterEngineers, Inc., at (281) 373-0500.

Issuance Date June 18, 2018

TRD-201802774
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 20, 2018

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Notice of Correction to Agreed Order Number 17

In the January 5, 2018, issue of the *Texas Register* (43 TexReg 110), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 17, for SELECT SPECIALTY HOSPITAL -DALLAS, INCORPORATED.

The reference to penalty should be corrected to: "$8,604."

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201802755
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
June 19, 2018

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Notice of Hearing Anderson Columbia Co., Inc.

SOAH Docket No. 582-18-3933

TCEQ Docket No. 2018-0560-AIR

Proposed Permit No. 74746L004

APPLICATION.

Anderson Columbia Co., Inc., P.O. Box 1829, Lake City, Florida 32056-1829, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Air Quality Permit Number 74746L004, which would authorize a change of location of a Rock Crusher. The applicant has provided the following directions to the site: at the intersection of Coyote Run and Old Nacogdoches, go north on Coyote Run 0.4 miles and the plant will be located on the east side of the road, Schertz, Comal County, Texas 78132. 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=29.65389&lng=-98.23639&zoom=13&type=r>. For the exact location, refer to the application. 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. The facility will emit the following contaminants: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide. This application was submitted to the TCEQ on April 24, 2017.

The TCEQ Executive Director has 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. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the TCEQ central office, the TCEQ San Antonio regional office, and the New Braunfels Public Library, 700 East Common Street, New Braunfels, Comal County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published in English and Spanish on September 29, 2017. On December 27, 2017, 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 preliminary hearing at:

10:00 a.m. - July 24, 2018

Comal County Courthouse

100 Main Plaza, 2nd Floor

New Braunfels, Texas 78130

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.

The purpose of the preliminary hearing is to establish jurisdiction, afford people the opportunity to request to be a party, and to provide all named parties an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing.

To request to be a party, you must attend the preliminary 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.

Please be advised that SOAH will also be conducting a preliminary hearing on the application for issuance of Air Quality Permit Number 146806L001, which would authorize construction of a Rock Crushing Plant at the same site. The preliminary hearing on the application for issuance of Air Quality Permit Number 146806L001 will be held on the same date and in the same location listed above. The time for that hearing will be 1:30 p.m.

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.* General information regarding the TCEQ may be obtained electronically at http://www.tceq.texas.gov

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 Anderson Columbia Co., Inc. at the address stated above or by calling Mrs. Katy Sipe, Westward Environmental Inc., at (830) 249-8284.

Issued: June 15, 2018

TRD-201802777
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
June 20, 2018

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Notice of Hearing Anderson Columbia Co., Inc.

SOAH Docket No. 582-18-3934

TCEQ Docket No. 2018-0561-AIR

Proposed Permit No. 146806L001

APPLICATION.

Anderson Columbia Co., Inc., P.O. Box 1829, Lake City, Florida 32056-1829, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 146806L001, which would authorize construction of a Rock Crushing Plant. The following directions have been provided by the applicant: from the intersection of Coyote Run and Old Nacogdoches Road go north on Coyote Run approximately 180 feet and the entrance to site is on the east side of Coyote Run, Schertz, Comal County, Texas 78132. 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=29.65197&lng=-98.23896&zoom=13&type=r>. For the exact location, refer to the application. 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. The proposed facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less. This application was submitted to the TCEQ on May 15, 2017.

The TCEQ Executive Director has 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. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the TCEQ central office, the TCEQ San Antonio regional office, and the New Braunfels Public Library, 700 East Common Street, New Braunfels, Comal County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published in English and Spanish on September 29, 2017. On December 27, 2017, 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 preliminary hearing at:

1:30 p.m. - July 24, 2018

Comal County Courthouse

100 Main Plaza, 2nd Floor

New Braunfels, Texas 78130

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.

The purpose of the preliminary hearing is to establish jurisdiction, afford people the opportunity to request to be a party, and to provide all named parties an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing.

Please be advised that SOAH will also be conducting a preliminary hearing on the application for issuance of Air Quality Permit Number 74746L004, which would authorize a change of location of a Rock Crusher at the same site. The preliminary hearing on the application for issuance of Air Quality Permit Number 74746L004 will be held on the same date and in the same location listed above. The time for that hearing will be 10:00 a.m.

To request to be a party, you must attend the preliminary 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.* General information regarding the TCEQ may be obtained electronically at http://www.tceq.texas.gov

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 Anderson Columbia Co., Inc. at the address stated above or by calling Mr. David Knollhoff, CCM, Westward Environmental Inc., at (830) 249-8284.

Issued: June 15, 2018

TRD-201802778
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
June 20, 2018

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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 31, 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 31, 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: Allstate BK Real Estate Holdings, Ltd.; DOCKET NUMBER: 2017-0538-PWS-E; TCEQ ID NUMBER: RN102471216; LOCATION: 7015 North Sam Houston Parkway East near Humble, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 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 §290.41(c)(3)(O), by failing to protect the well with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so valves and mains can be easily located during emergencies; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 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 facility will use to comply with the monitoring requirements; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: $1,244; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Charles J. Wilson dba Memory Lane MHP; DOCKET NUMBER: 2017-0962-PWS-E; TCEQ ID NUMBER: RN102686649; LOCATION: approximately 0.6 miles south of Highway 90 on Farm-to-Market Road 1117 near Seguin, Guadalupe County; TYPE OF FACILITY: public water system; 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 one raw groundwater source Escherichia coli (*E. coli*) sample from the facility's active source within 24 hours of being notified of a distribution total coliform-positive result on a routine sample during the month of March 2014, and failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to collect a raw groundwater source *E. coli* sample during the month of March 2014; 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 five sample sites, have the samples analyzed, and report the results to the ED for the January 1 - December 31, 2016 monitoring period, 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 - December 31, 2016 monitoring period; 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and

(f), 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, 2013 - December 31, 2015 monitoring period, 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, 2013 - December 31, 2015 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, 2013 - December 31, 2015 monitoring period; 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 for the second quarter of 2014; PENALTY: $880; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of Galena Park; DOCKET NUMBER: 2017-1480-PST-E; TCEQ ID NUMBER: RN101701324; LOCATION: 1107 5th Street, Galena Park, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a fleet refueling facility; RULES VIOLATED: TWC §26.3475(b) and 30 TAC §334.50(b)(2)(B)(i)(I), by failing to provide release detection for the suction piping associated with the UST system; TWC §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 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 components are operating properly; and TWC §26.3475(d) and 30 TAC §334.49(a)(2), by failing to ensure the UST corrosion protection system was operated and maintained in a manner that will ensure continuous corrosion protection; PENALTY: $9,114; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: DSJS Management, LLC; DOCKET NUMBER: 2016-1035-MWD-E; TCEQ ID NUMBER: RN106656671; LOCATION: 11704 South United States Highway 181, San Antonio, Bexar County; TYPE OF FACILITY: mobile home park with an on-site sewage facility; RULES VIOLATED: TWC §26.121(a)(1) and 30 TAC §305.42(a), by failing to obtain authorization for the treatment and disposal of domestic wastewater; TWC §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; and TWC §26.039(b), by failing to provide notification within 24 hours after a spill or discharge occurred; PENALTY: $7,838; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: First Solid Energy Group, LP; DOCKET NUMBER: 2017-1116-AIR-E; TCEQ ID NUMBERS: RN109427195 and RN106921877; LOCATIONS: near the intersection of Fort Bend County Toll Road and Farm-to-Market Road 2234 (also identified as McHard Road), approximately three miles southeast of Missouri City, Fort Bend County (Plants 1 and 2); TYPE OF FACILITIES: oil and gas production sites; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization to construct and operate a source of air emissions for Plants 1 and 2; PENALTY: $5,250; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: LCY ELASTOMERS LP; DOCKET NUMBER: 2017-0615-IWD-E; TCEQ ID NUMBER: RN102325974; LOCATION: on the west side of Decker Drive, approximately 1,700 feet north of Baker Road and 1,600 feet south of Redell Road, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number (TPDES) WQ0004772000, Whole Effluent Toxicity (WET) Limit, by failing to comply with the quarterly WET limit of not less than 56% effluent concentration; and TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0004772000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $78,750; Supplemental Environmental Projects offset amounts of $29,375 applied to *Wastewater Treatment Assistance* and $10,000 applied to *Household Hazardous Waste Collection;* STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Tiller Family, L.P.; DOCKET NUMBER: 2017-0284-MLM-E; TCEQ ID NUMBER: RN105440085; LOCATION: 7200 North Angora Loop Drive, El Paso, El Paso County; TYPE OF FACILITY: property; RULES VIOLATED: 40 Code of Federal Regulations §262.11 and 30 TAC §§335.62, 335.503(a), and 335.504, by failing to conduct hazardous waste determinations and waste classifications; 30 TAC §335.2(a), by causing, suffering, allowing, or permitting the unauthorized storage of industrial solid waste; 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized storage of municipal solid waste; and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting unauthorized outdoor burning; PENALTY: $9,204; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-201802757
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
June 19, 2018

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC) §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 31, 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 31, 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: Abril R. Medina; DOCKET NUMBER: 2017-0849-PST-E; TCEQ ID NUMBER: RN102783891; LOCATION: 2702 South Port Avenue, Corpus Christi, Nueces County; TYPE OF FACILITY: underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $3,750; STAFF ATTORNEY: Joey Washburn, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: Effren Hernandez dba Fuerte Granite & Tile; DOCKET NUMBER: 2017-1412-MLM-E; TCEQ ID NUMBER: RN109873273; LOCATION: 13123 Lookout Way, San Antonio, Bexar County; TYPE OF FACILITY: tile and granite manufacturing facility; RULES VIOLATED: TWC, §26.121, 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; and TWC §26.121 and 30 TAC §335.4(1), by failing to prevent the unauthorized discharge of industrial waste into or adjacent to water in the state; PENALTY: $3,750; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Johnny Lee Graves; DOCKET NUMBER: 2017-1491-PST-E; TCEQ ID NUMBER: RN101789675; LOCATION: at the southwest corner of the South 2nd Street and Avenue L intersection, Chillicothe, Hardeman County; TYPE OF FACILITY: inactive underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $6,562; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201802758
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
June 19, 2018

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC) §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 31, 2018.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400, and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087, and must be **received by 5:00 p.m. on July 31, 2018.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Albert Aguero and Cynthia Aguero; DOCKET NUMBER: 2017-0827-PST-E; TCEQ ID NUMBER: RN101761872; LOCATION: 102 South Main Street, Cotulla, La Salle County; TYPE OF FACILITY: temporarily out-of-service UST system; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A,

B, and C - for the facility; 30 TAC §334.54(b)(1), by failing to keep all vent lines open and functioning; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; TWC §26.3475(c)(1) and 30 TAC §334.50 and §334.54(c)(2), by failing to monitor a temporarily out-of-service UST system which has not been emptied for releases; and 30 TAC §37.867(a), by failing to ensure that a temporarily out-of-service system is empty not later than 90th day after the coverage of financial assurance terminates; PENALTY: $8,750; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: TOCOR ENTERPRISES LLC dba Snappys; DOCKET NUMBER: 2017-0449-PST-E; TCEQ ID NUMBER: RN102466687; LOCATION: 635 International Boulevard, Brownsville, Cameron County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs 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; 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C - for the facility; and TWC, §26.3475(c)(2) and 30 TAC §334.42(i), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure their sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid or debris; PENALTY: $6,484; 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.

TRD-201802756
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
June 19, 2018

♦ ♦ ♦

Notice of Public Meeting

An application to amend beneficial use site registration number 710887 for:

Applicant: Charles Wade Foster

1292 Hazelwood Road

Sherman, Texas 75092

was received by the Texas Commission on Environmental Quality (TCEQ) on January 11, 2018 and declared to be administratively complete on March 12, 2018.

Type of Operation: Beneficial land application of domestic septage products only.

Location of Site: The site is located at 1292 Hazelwood Road, Sherman, in Grayson County, Texas 75092. 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=33.653055&lng=-96.755383&zoom=13&type=r

Remarks: The applicant is seeking authorization to amend the registration to authorize an increase in the acreage used for beneficial land application from 18.75 acres to 35 acres.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application due to significant public interest. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application.

The public meeting 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 application for registration. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the application for registration, members of the public may state their formal comments orally into the official record. The Executive Director will consider all relevant information pertaining to whether the Applicant meets the requirements of the application for registration and will issue a written determination upon final action on the application. If the authorization is issued, a copy of the authorization and final technical summary will be sent to each person who submits a formal comment or who requests to be on the mailing list for this authorization and provides a mailing address.

The Public Meeting is to be held:

Tuesday, July 31, 2018, at 6:00 p.m.

Grayson County Courthouse

Assembly Room

100 West Houston Street

Sherman, Texas 75092

Citizens are encouraged to submit written public comments to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/about/comments.html within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

Information. Written public comments should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at http://www14.tceq.texas.gov/epic/eComment/. For additional information about the application or the procedure for public participation in the general permit process, individual members of the general public may contact the Public Education Program at (800) 687-4040. *Si desea información en español, puede llamar al (800) 687-4040.* General information regarding the TCEQ can be found at our website at www.tceq.texas.gov/.

The TCEQ mailed a copy of the application for registration to the Grayson County Judge for viewing by interested parties. For further information concerning this application, you may contact the authorized person to act for the applicant, Mr. Charles Foster, Advantage Septic Solutions, at (903) 814-9244.

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.

Issued: June 20, 2018

TRD-201802775

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
June 20, 2018

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Notice of Water Rights Application

Notice issued June 20, 2018

APPLICATION NO. 12-3610A; John C. Taylor and Delisa R. Taylor, 1314 Highway 36 E., Rising Star, Texas 76471, Applicants, seek to amend Certificate of Adjudication No. 12-3610 to move the diversion point to the perimeter of the two existing reservoirs on an unnamed tributary of Beattie Branch and Beattie Branch, Brazos River Basin, described in Certificate of Adjudication No. 12-3580 for subsequent diversion and use for agricultural purposes to irrigate 59 acres in Comanche County. More information on the application and how to participate in the permitting process is given below. The application was received on November 23, 2015. Additional information and fees were received on August 22 and 26, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 18, 2016. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by July 09, 2018. To view the complete issued notice, view the notice on our website 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 website, 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, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201802773
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
June 20, 2018

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 13, 2018, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. Larry Polinard; SOAH Docket No. 582-17-4917; TCEQ Docket No. 2016-1668-WQ-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Larry Polinard on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201802772
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
June 20, 2018

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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) 463-5800.

Deadline: Semiannual Report due April 23, 2018, for Candidates and Officeholders

Sean Russell, 1808 Carleton Ave, Fort Worth, Texas 76107

Deadline: Personal Financial Statement due April 23, 2018

Sean Russell, 1808 Carleton Ave, Fort Worth, Texas 76107

Edward Lee Nash Jr., 4101 W. Green Oaks Blvd. #305312, Arlington, Texas 76107

Marco A. Sevilla, 4345 FM 962 South, Alto, Texas 75925

Deadline: Semiannual Report due January 16, 2018, for Committees

Tommy J. Azopardi, Texans for Economic Development, 1122 Colorado, Ste. 209, Austin, Texas 78701

Kenneth Lane Barton, Concerned Citizens of Garrison, P.O. Box 508, Garrison, Texas 75946

John H. Chase, Vote Texas Blue, 7123 Dalewood Ln., Dallas, Texas 75214

Leisha A. D'Angelo, We Are Pearland PAC, 2404 South Grand, Ste. 210, Pearland, Texas 77581

Lindsey Edwards, Vote Yes Aledo ISD, 116 Greystone St., Aledo, Texas 76008

William Elliot, Jr., Texas Card Players Association Political Action Committee, P.O. Box 26176, Austin, Texas 78755-0176

Gilbert Enriquez, Common Sense Government Political Action Committee, 3025 S. Sugar Road, Edinburg, Texas 78539

Joshua S. Finkenbinder, Texas Combat Veterans, 909 Hampshire, Grand Prairie, Texas 75050

Cynthia Flint, Turn TX Green, P.O. Box 4, Austin, Texas 78767

Ralph B. Garcia, Our Astrodome, 118 Dresden St., Houston, Texas 77012

Jonathon David Gins, Valley Political Action Committee, 1474 W. Price Rd., Ste. 7, Box 426, Brownsville, Texas 78520

Lorenzo Gonzalez, Southside Today, PAC, 1114 Par Four, San Antonio, Texas 78221

Grace Hernandez, MAD ORGANIZANDO NOCHE Y DIA Y ADELANTE, 233 E. Lubbock, San Antonio, Texas 78204

Michelle Jurado, Shine On, 5801 Silversprings Dr. #507, El Paso, Texas 79912

Jacob P. Limon, Revolution Texas, 2022 Ford St., Austin, Texas 78704-2838

Esmer Lopez, Weslaco Municipal Police Association Political Action Committee, 4804 Mile 9 Rd. N., Mercedes, Texas 78570

Jeannette M. Loucks, Vote Yes for WISD, 820 Ferris Ave. Ste. 225, Waxahachie, Texas 75165

Kimberly Petit, Uptown PAC, 1600 Post Oak Blvd., Ste. 700, Houston, Texas 77056

Melissa Rascon, Professional Leadership PAC, 1095 Evergreen Circle, Ste. 200, The Woodlands, Texas 77380

Monica L. Sanchez, Save East Austin Schools Political Action Committee, 1906 St. Albans Blvd., Austin, Texas 78745-2896

Michael Lee Steenbergen, Generationist Political Action Committee, 2208 Belaire Dr., Granite Shoals, Texas 78654

Michael Lee Steenbergen, Texas Democrats, 2208 Belaire Dr., Granite Shoals, Texas 78654

Deadline: Lobby Activities Report due January 10, 2018

Vanus J. Priestley, 2520 Bluebonnet, Unit 58, Austin, Texas 78704

Deadline: Lobby Activities Report due March 12, 2018

Jerry Philips, Capitol Station, P.O. Box 13506, Austin, Texas 78711

Deadline: Lobby Activities Report due April 10, 2018

Katheryn Johnson, 919 Congress Ave., Ste. 1500, Austin, Texas 78701

TRD-201802627
Seana Willing
Executive Director
Texas Ethics Commission
June 14, 2018

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Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Correction of Error

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposed amendments to TAC 4, Commercial Feed Rules, by updating §61.1, Definitions, which was published in the June 15, 2018, issue of the *Texas Register* (43 TexReg 3851). Due to a departmental error, a typo was found in paragraph §61.1(11), in the second sentence. The typo is the word "framer's." The correct spelling should be "farmer's" of the proposed amendment.

Correction of error:

(11) Feed Product Produced and Sold by a Farmer--Homogeneous, unprocessed and whole grain, whole seed, and unground hay and any hulls not containing toxins or chemical adulterants are exempt from licensing, labeling and inspection fees. Exempt feed products offered for sale by a farmer must be grown on land solely under the farmer's control, and be handled and transported under the farmer's control. Green forage crops thus produced, including ensilage produced from an exempt crop, are also exempt.

TRD-201802711
Dr. Timothy Herrman
State Chemist and Director
Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist
Filed: June 18, 2018

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Texas Health and Human Services Commission

Public Notice: Withdrawal of FQHC CHIP SPA (09/01/2017)

In the May 19, 2017, issue of the *Texas Register* (42 TexReg 2758), the Texas Health and Human Services Commission (HHSC) published a notice of its intent to submit transmittal number 18-0042 to the Texas State Plan for the Children's Health Insurance Program (CHIP), under Title XXI of the Social Security Act.

Texas is withdrawing the Public Notice for the CHIP SPA 18-0042 titled Federally Qualified Health Center (FQHC). The amendment regarding FQHCs will be included in a different CHIP SPA (18-0044) along with additional updates related to CHIP provider enrollment, and the removal of obsolete information from the cost sharing table.

For questions related to the withdrawal, interested parties may contact Beren Dutra, State Plan Program Specialist, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Notice of the withdrawal will also be posted for public review at the local offices of the Texas Health and Human Services Commission.

TRD-201802780
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 20, 2018

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Texas Department of Housing and Community Affairs

Release of the Notice of Funding Availability for the Texas Department of Housing and Community Affairs 2019 Amy Young Barrier Removal Program

I. Source of Funds.

The Amy Young Barrier Removal Program ("AYBR") is funded through the Housing Trust Fund which was established by the 72nd Legislature, Senate Bill 546, Texas Government Code §2306.201, to create affordable housing for low- and very low-income households. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability ("NOFA") Summary.

The Texas Department of Housing and Community Affairs (the "Department") announces $1,545,028.18 in project funding from the Housing Trust Fund Plan ("HTF"). Any other funds that are available to reprogram as of September 1, 2018 will be added to the balance using a geographic dispersion method. A minimum of $1,545,028.18 will be available for Program Reservation Setups beginning Tuesday, September 11, 2018, at 10:00 a.m. Austin local time (the "reservation start date").

The AYBR Program provides one-time grants of up to $20,000 to Persons with Disabilities in a household qualified as earning 80% or less of the applicable Area Median Family Income. Grants are for home modifications that increase accessibility, eliminate life-threatening hazards and correct unsafe conditions.

To be able to reserve AYBR Program funds on behalf of an eligible Person with Disabilities, nonprofit organizations, units of local government, councils of government, local mental health authorities, and public housing authorities must apply to be a Program Administrator and execute an AYBR Program Reservation System Agreement.

III. Additional Information.

The 2019 AYBR Program NOFA is posted on the Department's website at http://www.tdhca.state.tx.us/htf/single-family/amy-young.htm. Questions regarding the AYBR Program NOFA may be addressed to Diana Velez at (512) 475-4828 or diana.velez@tdhca.state.tx.us.

TRD-201802713
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 18, 2018

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Texas Department of Insurance

Company Licensing

Application for FEDERATED NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty company, to change its name to FEDNAT INSURANCE COMPANY. The home office is in Sunrise, Florida.

Application to do business in the state of Texas for CLERMONT INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Urbandale, Iowa.

Application to do business in the state of Texas for AUTO-OWNERS SPECIALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Dover, Delaware.

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-201802770
Norma Garcia
General Counsel
Texas Department of Insurance
June 20, 2018

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Texas Lottery Commission

Scratch Ticket Game Number 2063 "50X Fast Cash"

Name and Style of Game.

A. The name of Scratch Ticket Game No. 2063 is "50X FAST CASH". The play style is "match 3 of X".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2063 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2063.

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: TIRE SYMBOL, WRENCH SYMBOL, GASOLINE PUMP SYMBOL, FLAG SYMBOL, TROPHY SYMBOL, FUEL SYMBOL, SUN SYMBOL, MEGAPHONE SYMBOL, CLOCK SYMBOL, BINOCULARS SYMBOL, CAP SYMBOL, HELMET SYMBOL, GLOVE SYMBOL, WATER BOTTLE SYMBOL, MEDAL SYMBOL, FIRE EXTINGUISHER SYMBOL, KEY SYMBOL, STREET LIGHTS SYMBOL, RACE CAR SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2063 - 1.2D

PLAY SYMBOL	CAPTION
TIRE SYMBOL	TIRE
WRENCH SYMBOL	WRENCH
GASOLINE PUMP SYMBOL	PUMP
FLAG SYMBOL	FLAG
TROPHY SYMBOL	TROPHY
FUEL SYMBOL	FUEL
SUN SYMBOL	SUN
MEGAPHONE SYMBOL	MEGAPHON
CLOCK SYMBOL	CLOCK
BINOCULARS SYMBOL	BINOC
CAP SYMBOL	CAP
HELMET SYMBOL	HELMET
GLOVE SYMBOL	GLOVE
WATER BOTTLE SYMBOL	WATER
MEDAL SYMBOL	MEDAL
FIRE EXTINGUISHER SYMBOL	FIRE EXT
KEY SYMBOL	KEY
STREET LIGHTS SYMBOL	LIGHTS
RACE CAR SYMBOL	WIN
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit 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 (2063), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2063-0000001-001.

H. Pack - A Pack of "50X FAST CASH" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket

001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "50X FAST CASH" Scratch Ticket Game No. 2063.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "50X FAST CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 64 (sixty-four) Play Symbols. If a player reveals 3 matching Play Symbols in the same GAME, the player wins the PRIZE for that GAME. If a player reveals 2 matching Play Symbols and a "RACE CAR" Play Symbol in the same GAME, the player wins 2X the PRIZE for that GAME. If a player reveals 2 "RACE CAR" Play Symbols in the same GAME, the player wins 5X the PRIZE for that GAME. If a player reveals 3 "RACE CAR" Play Symbols in the same GAME, the player wins 50X the PRIZE for that GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket Game.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 64 (sixty-four) 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 64 (sixty-four) 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 64 (sixty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 64 (sixty-four) 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. A Ticket can win up to sixteen (16) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. There will be no matching non-winning GAMES on a Ticket. GAMES are considered matching if they have the same Play Symbols in the same spots.

E. No three (3) or more matching non-winning Play Symbols will appear in adjacent positions diagonally or in a column.

F. The "RACE CAR" (WIN) Play Symbol will only appear on winning Tickets and will appear on winning GAMES as dictated by the prize structure.

G. No more than two (2) matching non-winning Play Symbols will appear in one (1) GAME.

H. Non-winning Prize Symbols will never appear more than three (3) times.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "50X FAST CASH" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "50X FAST CASH" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "50X FAST CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

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 Section 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "50X FAST CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "50X FAST CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "50X FAST CASH" Scratch Ticket may be entered into one of four promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 5,520,000 Scratch Tickets in the Scratch Ticket Game No. 2063. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2063 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	809,600	6.82
$10	699,200	7.89
$20	147,200	37.50
$50	34,500	160.00
$100	10,120	545.45
$500	184	30,000.00
$1,000	50	110,400.00
$100,000	4	1,380,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.25. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2063 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC § 401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2063, 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-201802753
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 18, 2018

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Scratch Ticket Game Number 2083 "$250,000 50x Cashword"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2083 is "$250,000 50X CASHWORD." The play style is "crossword."

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2083 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2083.

A. Display Printing - The area of the Scratch Ticket outside of the overprint and Play Symbols area.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, BLACKENED SQUARE SYMBOL, BELL SYMBOL, COIN SYMBOL, GOLD BAR SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL and POT OF GOLD SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The description for each Play Symbol Caption, which corresponds with and verifies each Play Symbol, is as follows:

Figure 1: GAME NO. 2083 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
▒ SYMBOL	
BELL SYMBOL	WINX1
COIN SYMBOL	WINX2
GOLD BAR SYMBOL	WINX3
MONEY BAG SYMBOL	WINX5
STACK OF BILLS SYMBOL	WINX10
POT OF GOLD SYMBOL	WINX50

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit 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 (2083), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2083-0000001-001.

H. Pack - A Pack of "$250,000 50X CASHWORD" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket, or Ticket - Texas Lottery "$250,000 50X CASHWORD" Scratch Ticket Game No. 2083

2.0 Determination of Prize Winners.

The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. Each Scratch Ticket contains exactly 312 (three hundred twelve) Play Symbols. A prize winner in the "$250,000 50X CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose all of the YOUR 20 LETTERS Play Symbols. The player then scratches all the letters found in GAME 1, GAME 2 and GAME 3 that exactly match the YOUR 20 LETTERS Play Symbols. If the player has scratched at least 2 complete WORDS within a GAME, the player wins the prize found in the corresponding PRIZE LEGEND. WORDS revealed in one GAME cannot be combined with WORDS revealed in another GAME. Each GAME is played separately. Only one prize is paid per GAME. Only letters within the same GAME that are matched with the YOUR 20 LETTERS Play Symbols can be used to form a complete WORD. In each GAME, every lettered square within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS Play Symbols to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. A complete WORD must contain at least three (3) letters. GAME 1 and GAME 2 can win by revealing 2 to 11 complete WORDS on each GAME. GAME 3 can win by revealing 2 to 9 complete WORDS. MULTIPLIER BONUS: The player must scratch the MULTIPLIER SYMBOL. The player must multiply the total prize won in GAMES 1, 2 and 3 by the MULTIPLIER SYMBOL found in the legend to win that amount. Revealing a BELL SYMBOL (WINX1) does not multiply winnings in any GAME. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 312 (three hundred twelve) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo games do not typical have Play Symbol Captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, 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 312 (three hundred twelve) 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 312 (three hundred twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 312 (three hundred twelve) 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, ineligible for any prize, and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game), or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: There is no correlation between any exposed data on a Ticket and its status as a winner or non-winner.

C. CROSSWORD GAMES: Each grid from GAME 1 and GAME 2 will contain exactly the same number of letters.

D. CROSSWORD GAMES: Each grid from GAME 1 and GAME 2 will contain exactly the same number of words.

E. CROSSWORD GAMES: There are no matching words on a Ticket.

F. CROSSWORD GAMES: All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.2, dated December 4, 2017.

G. CROSSWORD GAMES: All words will contain a minimum of 3 letters.

H. CROSSWORD GAMES: All words will contain a maximum of 9 letters.

I. CROSSWORD GAMES: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS play area. Vowels are considered to be A, E, I, O, U.

J. CROSSWORD GAMES: No consonant will appear more than nine (9) times, and no vowel will appear more than fourteen (14) times in GAME 1 and GAME 2.

K. CROSSWORD GAMES: No consonant will appear more than seven (7) times, no vowel will appear more than ten (10) times in GAME 3.

L. CROSSWORD GAMES: There are no matching Play Symbols in the YOUR 20 LETTERS play area.

M. CROSSWORD GAMES: At least fifteen (15) of the letters in the YOUR 20 LETTERS play area will open at least one letter in GAME 1, GAME 2 (11x11) and GAME 3 (7x7) crossword grids combinations.

N. CROSSWORD GAMES: The presence or absence of any letter or combination of letters in the YOUR 20 LETTERS play area will not be indicative of a winning or Non-Winning Ticket.

O. CROSSWORD GAMES: Words from the TEXAS REJECTED WORD LIST v.2.3, dated December 4, 2017, will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

P. CROSSWORD GAMES: On Non-Winning Tickets, there will be one (1) completed word in GAME 1 and one (1) completed word in GAME 2.

Q. CROSSWORD GAMES: There will be a random distribution of all Play Symbols on the Ticket, unless restricted by other parameters, play action or prize structure.

R. CROSSWORD GAMES: GAME 1 and GAME 2 will have no more than eleven (11) complete words per grid.

S. CROSSWORD GAMES: GAME 3 will have no more than nine (9) complete words.

T. CROSSWORD GAMES: A Ticket can only win one (1) time per GAME and a total of up to three (3) times per Ticket in accordance with the approved prize structure.

U. CROSSWORD GAMES: Each Ticket in a Pack will have unique GAMES.

V. MULTIPLIER BONUS: The MULTIPLIER BONUS Play Symbols of "BELL" (WINX1), "COIN" (WINX2), "GOLD BAR" (WINX3), "MONEY BAG" (WINX5), "STACK OF BILLS" (WINX10) and "POT OF GOLD" (WINX50) will only be used on winning Tickets, as dictated by the prize structure.

W. MUTLIPLIER BONUS: Tickets that do not win in the "MULTIPLIER BONUS" play area will display the "BELL" (WINX1) MULTIPLIER BONUS Play Symbol.

X. MUTLIPLIER BONUS: Revealing a "BELL" (WINX1) MULTIPLIER BONUS Play Symbol does not multiply winnings in any GAME.

Y. MULTIPIER BONUS: Tickets that do not win in GAME 1, GAME 2, or GAME 3 will use the "BELL" (WINX1) MULTIPLIER BONUS Play Symbol in the "MULTIPLIER BONUS" play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "$250,000 50X CASHWORD" Scratch Ticket Game prize of $10.00, $20.00, $30.00, $50.00, $80.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $80.00, $100, $200 or $500 Scratch Ticket Game Prize. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$250,000 50X CASHWORD" Scratch Ticket Game prize of $1,000, $10,000 or $250,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event

that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$250,000 50X CASHWORD" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

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 "$250,000 50X CASHWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$250,000 50X CASHWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize not claimed within that period, in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 12,000,000 Scratch Tickets in Scratch Ticket Game No. 2083. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2083 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	1,320,000	9.09
$20	840,000	14.29
$30	840,000	14.29
$50	250,000	48.00
$80	45,000	266.67
$100	67,500	177.78
$200	10,500	1,142.86
$500	2,000	6,000.00
$1,000	1,200	10,000.00
$10,000	23	521,739.13
$250,000	6	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.55. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2083 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2083, 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-201802761
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 19, 2018

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Texas Department of Motor Vehicles

Extension of Comment Period

The Texas Department of Motor Vehicles proposed amendments to Chapter 217, Vehicle Titles and Registration, Subchapter B, Motor Vehicle Registration, §217.27, Vehicle Registration Insignia. The proposed changes to the rule were published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2737) with a thirty (30) day comment period to follow, which ended at 5:00 p.m. on June 4, 2018. **The comment period for the proposed changes has been extended for an additional thirty (30) days with comments accepted through 5:00 p.m. on July 30, 2018.**

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731, or by email to *rules@txdmv.gov.* For comments submitted electronically, please include "Proposed Rule §217.27" in the subject line.

Questions concerning the proposed changes to the rules may be directed to the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles, at (512) 465-4023. The department encourages all interested persons to submit written comments no later than July 30, 2018.

TRD-201802771
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
June 20, 2018

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One-Call Board of Texas

Request for Proposal - Financial and Management Review

BACKGROUND

The Texas Underground Facility Notification Corporation (dba One-Call Board of Texas or OCB) was created by the Texas Legislature in 1997 to implement and oversee a statewide "One-Call" excavation notification system. The governing statute is Utilities Code Chapter 251. The OCB is governed by a 12-member Board appointed by the Governor and operates as a "governmental entity" receiving no appropriated state funds. The statewide "One-Call" excavation notification system (also known as "811 System") currently consists of two independently operated Notification Centers (NtCn).

ISSUES TO BE REVIEWED

Financial Review

1. Review and reconcile financial records for calendar 2017

2. Review operation of QuickBooks and Chart of Accounts for accuracy and efficiency.

3. Review internal control procedures.

4. Review record retention rules and procedures including off-site storage.

5. Review other financial issues as appropriate.

6. Make recommendations for improvements.

Management Review

1. Review Utilities Code Chpt 251 to determine if OCB is fulfilling its statutory duties.

2. Review NtCn Technical Standards adopted by OCB to determine their appropriateness and effectiveness in insuring that NtCn's comply with their statutory responsibilities and authorities.

3. Review NtCn Performance Measures established by OCB to determine their appropriateness and effectiveness in insuring that the Texas Excavation Notification System or "811 System" is operating in accordance with the governing statute and providing an appropriate level of service to all users.

4. Review activity of NtCn's in "811 System" to determine compliance with statutory responsibilities and authorities as well as Technical Standards and Performance Measures.

5. Review changes in One-Call industry regarding receipt of Notices of Intent to Excavate (Locate Requests) by electronic means other than by telephone and determine how to monitor performance of NtCn's to insure that the "811 System" is operating in accordance with the governing statute and providing an appropriate level of service to all users.

6. Review other management issues as appropriate.

7. Make recommendations for improvements.

SUBMISSION PROCESS

Proposals must be submitted by fax not later than 3:00 p.m. on July 13, 2018.

Include estimated time needed for Financial Audit.

Include estimated time needed to Management Audit.

Include qualifications and experience on similar audits.

For more information, please contact:

Don Ward, Executive Director

(512) 467-2850

Jake Posey, Legal Counsel

(512) 646-0828

TRD-201802707
Don Ward
Executive Director
One-Call Board of Texas
June 15, 2018

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking to procure items for workforce training provided to students in the areas of welding, industrial machinery mechanics, instrumentation and electrical, pump and engine, process technology and nursing.

A copy of the solicitation(s) can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 Southwest Eighth Ave., Amarillo, Texas 79101 or by contacting Leslie Hardin, PRPC's Workforce Development Contracts Coordinator, at (806) 372-3381 or lhardin@theprpc.org. Proposals must be received at PRPC by 3:00 p.m. on Friday, July 13, 2018.

PRPC, as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter network, is an equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-201802626
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: June 14, 2018

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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 Aqua Texas, Inc. and the City of Tomball for Approval of Service Area Contract Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Harris County, Docket Number 48465.

The Application: City of Tomball and Aqua Texas, Inc. 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 Harris County. Tomball holds water CCN No. 13257 and sewer CCN No. 21103 and Aqua holds water CCN No.13203 and sewer CCN No. 21065. Applicants have agreed to alter the boundaries of their respective CCNs and transfer two separate affected areas comprising 709 acres and 0 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 48465.

TRD-201802763
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
June 19, 2018

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Notice of Application for Sale, Transfer, or Merger and to Transfer Load to ERCOT

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 29, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.101 and §37.154.

Docket Style and Number: Joint Application of Rayburn Country Electric Cooperative Inc. and Lone Star Transmission LLC to Transfer Load to ERCOT, for Sale of Transmission Facilities and Transfer of Certificate Rights in Henderson and Van Zandt Counties, Docket Number 48400.

The Application: Rayburn Country Electric Cooperative Inc. (Rayburn) and Lone Star Transmission LLC (Lone Star) filed a joint application for (1) approval to transfer and integrate Rayburn's load and related transmission assets currently in the Eastern Interconnection to the Electric Reliability Council of Texas; (2) approval of the Option 2 transmission plan identified by ERCOT to integrate the Rayburn load and facilities; and (3) approval of the transfer of Rayburn's 10.8-mile Barton Chapel to Ben Wheeler 138-kV transmission line, associated 138-kV facilities, and associated certificate of convenience and necessity rights in Henderson and Van Zandt Counties.

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 48400.

TRD-201802765
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
June 19, 2018

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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 June 6, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Kamira Property Owners Association, Inc. dba Kamira Water System and Bracero Water Supply Corporation for Sale, Transfer or Merger of Facilities and Certificate Rights in Kerr County, Docket Number 48438.

The Application: Kamira Property Owners Association, Inc. dba Kamira Water System (Kamira) and Bracero Water Supply Corporation for sale, transfer, or merger of certificate rights in Kerr County. Kamira seeks to transfer a portion of its CCN No. 12176 area to Bracero Water Supply Corporation.

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. Comments or a 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 48438.

TRD-201802764
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
June 19, 2018

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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 June 8, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Patton Village Water Company and the City of Patton Village for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County, Docket Number 48448.

The Application: Patton Village Water Company and the City of Patton Village filed an application for the sale, transfer, or merger of facilities and certificate rights in Montgomery County. If approved, Patton Village Water Company's facilities and water service area under certificate of convenience and necessity number 11193 will transfer to the City of Patton Village. The transfer includes approximately 500 acres and 550 current customers.

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 48448.

TRD-201802703
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2018

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Notice of Application for Service Area Exception

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 12, 2018, for a certificate of convenience and necessity service area exception within Smith County.

Docket Style and Number: Application of Upshur Rural Electric Cooperative Corporation for a Certificate of Convenience and Necessity Service Area Exception in Smith County. Docket Number 48457.

The Application: Upshur Rural Electric Cooperative Corporation (Upshur) filed an application for a service area exception to allow Upshur to serve a specific customer located within the certificated service area of Cherokee County Electric Cooperative (Cherokee). Cherokee has provided Upshur an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the commission no later than July 3, 2018, 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. 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 48457.

TRD-201802704
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
June 15, 2018

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Notice of Application to Amend a Service Provider Certificate of Operating Authority

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 13, 2018, in accordance with Public Utility Regulatory Act §54.151 - 54.156.

Docket Title and Number: Application of Tim Ron Enterprises, LLC dba Network Communications Telecom and Conterra Ultra Broadband Holdings, Inc. to Amend a Service Provider Certificate of Operating Authority, Docket No. 48463.

Tim Ron Enterprises, LLC dba Network Communications Telecom (Network Communications) and Conterra Ultra Broadband Holdings, Inc. (Conterra) seek approval to amend the service provider certificate of operating authority 60663, to reflect a change in ownership and control. Applicants request an amendment to reflect the acquisition of Network Communications by Conterra.

Persons wishing to 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 no later than July 6, 2018. 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 48463.

TRD-201802759
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: June 19, 2018

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Supreme Court of Texas

In the Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 18-9082

FINAL APPROVAL OF AMENDMENTS TO ARTICLE IV OF THE STATE BAR RULES

ORDERED that:

1. Article IV of the State Bar Rules is amended as set forth in this order. The amendments are effective immediately.

2. The Clerk is directed to:

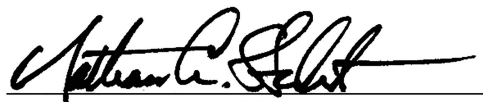
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

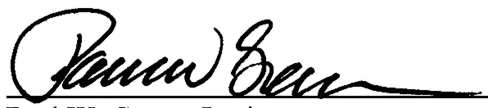
   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

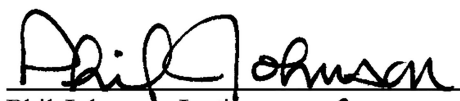
Dated: June 12, 2018.



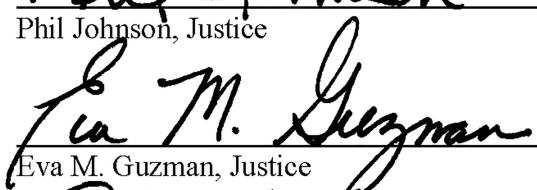
Nathan L. Hecht, Chief Justice



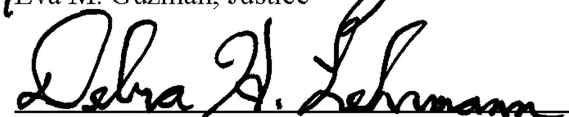
Paul W. Green, Justice



Phil Johnson, Justice



Eva M. Guzman, Justice



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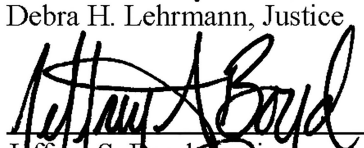
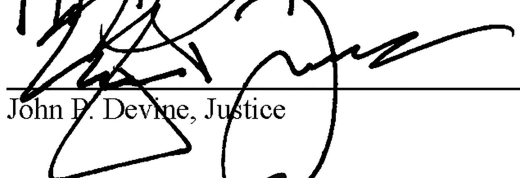
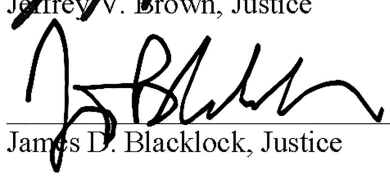


Jeffrey S. Boyd, Justice



John P. Devine, Justice

Jeffrey V. Brown, Justice



James D. Blacklock, Justice

ARTICLE IV
ADMINISTRATION

***

Section 7. Nominees for Office of Elected Director

A. An active member's name may be placed in nomination for the office of elected director by a written petition in form prescribed by the board and signed by the lesser of five percent (5%) of the active members whose principal place of practice is within the district to be represented by the nominee if elected, or one hundred (100) of such members, which petition must be received in the office of the executive director on or before March 1 of the year of the election. A petition signature is invalid if it is not dated or the signer signed the petition before September 1 of the year before the election. The executive director shall promptly review the petition to verify the eligibility of the nominee. If from the petition it appears the nominee is eligible, that person's name shall be listed upon the ballot. If from the petition the executive director finds the nominee to be ineligible, that fact shall immediately be communicated to the nominee. Any nominee desiring to appeal the findings of the executive director shall ~~forthwith~~ promptly notify the executive director, who shall ~~forthwith~~ promptly convene the executive committee to hear and determine the matter. The executive committee shall have final authority to determine questions of eligibility of the nominee and the validity of the nominating petition and shall do so within ten (10) days of the notice to the executive director.

B. The petitions may be in counterparts, and it shall be sufficient that the signatures on all the counterparts aggregate the required number of signatures.

C. If no valid petition nominating an eligible person shall have been received by the executive director by March 1 in respect to a district in the year in which such district is to elect a director, or if all persons who have been nominated in the foregoing manner shall have died or become disqualified from serving at any time prior to the printing of the ballot in such election, then the president of the State Bar with the advice of the person then serving as elected director from that district shall name a qualified person to stand for election as director from that district.

D. If an elected director fails to qualify, such position shall be deemed vacant.

***

Section 11. President-Elect, Nominations and Elections

A. At its first regularly scheduled quarterly meeting ~~next following the first day of~~ each ~~calendar~~ organizational year, the board of directors shall nominate two (2) or more members of the State Bar of Texas to stand for election to the office of president-elect for the ensuing ~~bar~~ organizational year. Such nomination shall be by majority vote of the board.

B. Any other member of the State Bar of Texas shall also be privileged to stand for election to the office of president-elect when a written petition in form prescribed by the board of directors, signed by no fewer than five percent (5%) of the active members of the State Bar of Texas in good standing, is ~~filed with~~received in the office of the executive director ~~or on~~ on or before March 1 ~~next preceding the election to be held for the office of president-elect for the ensuing year~~ of the year of the election. A petition signature is invalid if it is not dated or the signer signed the petition before September 1 of the year before the election.

C. The petitions may be in counterparts, and it shall be sufficient that the signatures on all the counterparts aggregate the required number of signatures.

~~C~~**D.** The names of all nominees for the office of president-elect shall be published in the Texas Bar Journal and otherwise publicized by such other practical means as the board shall determine.

~~D~~**E.** ~~In making nominations to the office of president-elect, both the board of directors and those persons who may be nominated by petition pursuant to Section 11(B) herein, shall be bound by the following geographical rotation:~~A geographical rotation governs the office of president-elect. To be eligible for the office, candidates—whether nominated by the board or by petition as described in Section 11(B)—must have their principal place of practice in a county that meets the requirements of the election year in the following rotation:

1. ~~nominees from metropolitan counties~~ in the first year ~~of rotation~~, a Metropolitan County, which means either Bexar, Dallas, Harris, Tarrant, or, Travis county;

2. ~~nominees from other than metropolitan counties~~ in the second year ~~of rotation~~, a county that is not a Metropolitan County;

3. in the third year, ~~nominees from~~ any county ~~during the third year of rotation~~.

~~Any person nominated by either the board or by petition who does not meet the requirements of this rotation shall be ineligible to stand for election in the year nominated.~~ For purposes of this rule, the first year of rotation shall be the election for president-elect for ~~1988~~the organizational year beginning in 2018.

~~E~~F. The ballot shall be distributed to each member of the State Bar of Texas entitled to vote at the same time as ballots for the election of elected directors are distributed. A combined ballot for the office of president-elect and for the office of director may be used in those bar districts in which an election for director is to be conducted.

~~F~~G. If no candidate for president-elect receives a majority of the votes, a run-off election shall be held at such time as the board shall prescribe between the two candidates receiving the greatest number of votes. The person receiving a majority of the votes in either the general election or the run-off election shall be declared to be elected to the office of president-elect.

~~G~~H. The office of president shall be filled by the succession of the president-elect to such office at the expiration of the term for which such person was elected to serve as president-elect.

TRD-201802625
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
June 13, 2018

♦ ♦ ♦

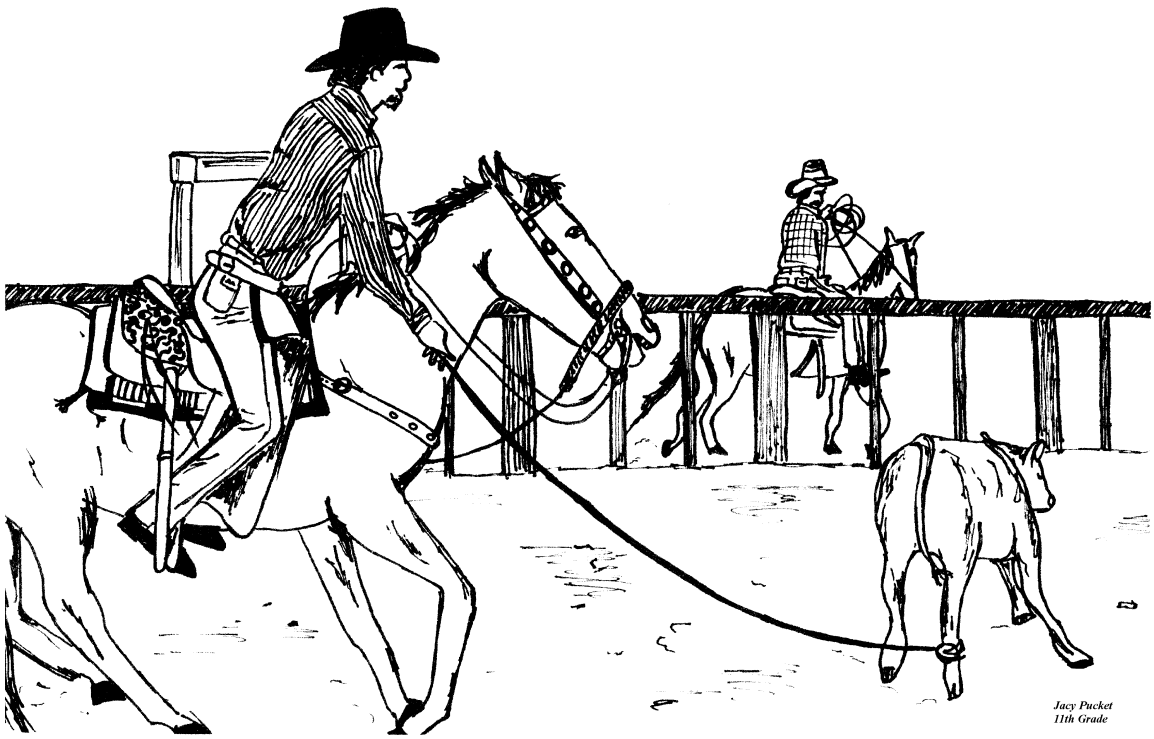
Teacher Retirement System of Texas

Award Notice - TRS Contract No. K201800298

Per Texas Government Code §2254.030, the Teacher Retirement System of Texas (TRS) announces this notice of award of a consulting services contract for Strategic Plan Development and Cascading Strategic Plans and Alignment, to the International Center for Management and Organization Effectiveness, 9146 South 700 East, Sandy, Utah 84070. The term of the contract is May 1, 2018, through August 31, 2019. The Consultant will provide on-site and remote consulting and support during the term of the contract. The contract total is $152,000.

TRD-201802628
Sophia Coronado
Purchaser V
Teacher Retirement System of Texas
Filed: June 14, 2018

♦ ♦ ♦



Jacy Pucket
11th Grade

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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