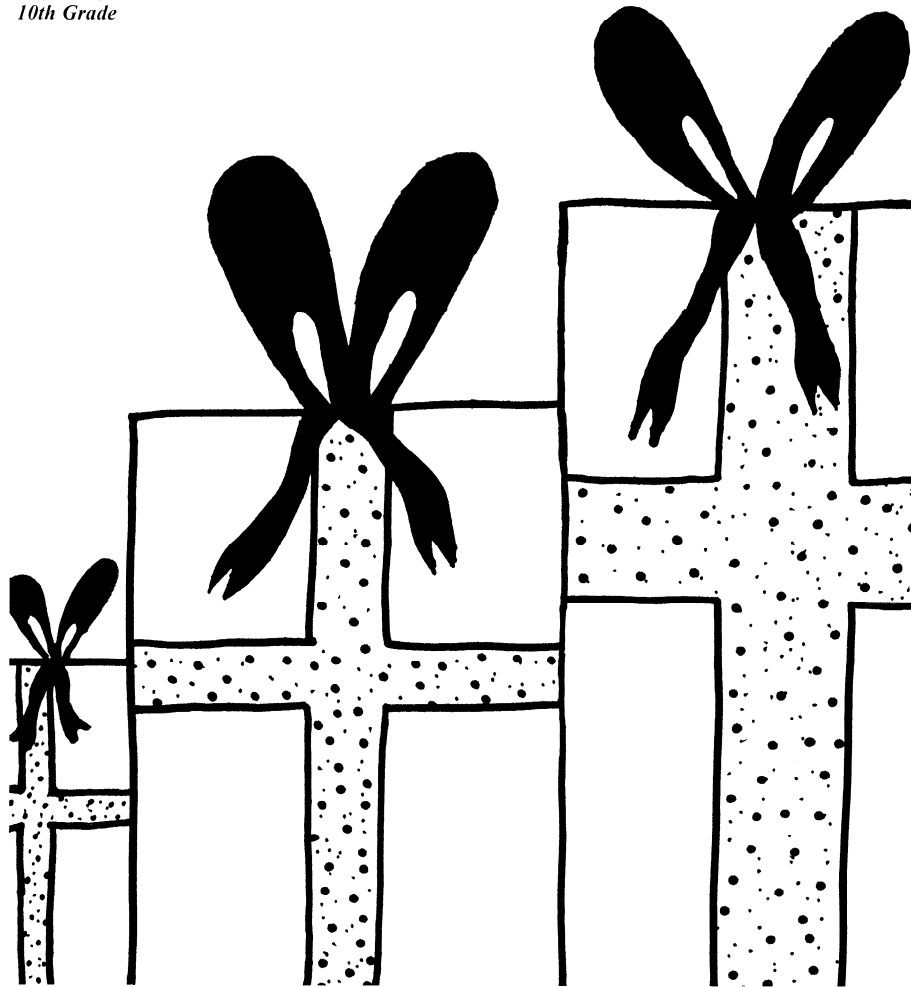

TEXAS REGISTER

Volume 43 Number 49

December 7, 2018

Pages 7835 - 7968

*Haylee Dye
10th Grade*



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

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

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

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

POSTMASTER: Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

TEXAS REGISTER

a section of the
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P.O. Box 12887
Austin, TX 78711
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THE GOVERNOR

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

Appointments

Appointments for November 12, 2018

Appointed to the Gulf Coast Authority Board of Directors, for a term to expire August 31, 2020, Lamont E. Meaux of Stowell, Texas (Mr. Stowell is being reappointed).

Appointed to the Gulf Coast Authority Board of Directors, for a term to expire August 31, 2020, Kevin M. Scott of Santa Fe, Texas (Mr. Scott is being reappointed).

Appointments for November 13, 2018

Appointed to the Texas Board of Professional Land Surveying, for a term to expire January 31, 2023, Jay D. Canine of Sugar Land, Texas (replacing Paul Pong Kin Kwan of Houston whose term expired).

Appointed to the Texas Board of Professional Land Surveying, for a term to expire January 31, 2023, Coleen M. Johnson of Leander, Texas (replacing Mary E. Chruszczak of The Woodlands whose term expired).

Appointed to the Texas Board of Professional Land Surveying, for a term to expire January 31, 2023, Michael D. "Mike" McCloskey of Round Rock, Texas (replacing Gerardo M. "Jerry" Garcia of Corpus Christi whose term expired).

Appointed to the Coastal Water Authority Board of Directors, for a term to expire April 1, 2020, Jon M. "Mark" Sjolander of Dayton, Texas (replacing Alan D. Conner of Dayton whose term expired).

Appointments for November 14, 2018

Appointed to the Angelina and Neches River Authority Board of Directors, for a term to expire September 5, 2023, Patricia E. "Pat" Dickey of Crockett, Texas (Ms. Dickey is being reappointed).

Appointed to the Angelina and Neches River Authority Board of Directors, for a term to expire September 5, 2023, Donnie R. Kee of Lufkin, Texas (replacing Julie Dowell of Bullard whose term expired).

Appointed to the Angelina and Neches River Authority Board of Directors, for a term to expire September 5, 2023, Virginia M. "Ginger" Lymbery of Lufkin, Texas (replacing Louis A. Bronaugh of Lufkin whose term expired).

Appointed to the Red River Authority of Texas Board of Directors, for a term to expire August 11, 2019, Zachary K. "Zack" Smith of Canyon, Texas (replacing C. Cole Camp of Amarillo who resigned).

Appointed to the San Jacinto River Authority Board of Directors, for a term to expire October 16, 2021, Brenda Cooper of Montgomery, Texas (replacing Fredrick D. "Fred" Koetting of The Woodlands who resigned).

Appointments of November 15, 2018

Appointed to the Parks and Wildlife Commission, for a term to expire February 1, 2023, Arch H. "Beaver" Aplin, III of Lake Jackson, Texas (replacing Billy B. "Bill" Jones of Austin whose term expired).

Appointed to the Parks and Wildlife Commission, for a term to expire February 1, 2023, Oliver J. Bell of Cleveland, Texas (replacing Thomas "Dan" Friedkin of Houston whose term expired).

Appointed to the Parks and Wildlife Commission, for a term to expire February 1, 2023, Richard R. "Dick" Scott of Wimberley, Texas (Mr. Scott is being reappointed).

Appointed to the Texas State Board of Examiners of Marriage and Family Therapists, for a term to expire February 1, 2023, Lisa V. Merchant, Ph.D. of Clyde, Texas (replacing Rick A. Bruhn, Ed.D. of Huntsville whose term expired).

Appointments for November 19, 2018

Appointed to the Texas Juvenile Justice Board, for a term to expire February 1, 2019, Vincent M. Morales, Jr. of Richmond, Texas (replacing Carol Lynn Villarreal Bush of Waxahachie who resigned).

Appointments for November 20, 2018

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2019, E'Loria Simon-Campbell, Ph.D. of Houston, Texas (replacing Paula Sela Gómez of Brownsville who resigned).

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2023, Janet S. Hall of Florence, Texas (replacing Floristene Johnson of DeSoto whose term expired).

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2023, John N. "Neal" Rutledge, M.D. of Austin, Texas (Dr. Rutledge is being reappointed).

Appointed to the Council on Cardiovascular Disease and Stroke, for a term to expire February 1, 2023, Harry K. "Kyle" Sheets, M.D. of Ovalo, Texas (Dr. Sheets is being reappointed).

Appointed to the Correctional Managed Health Care Committee, for a term to expire February 1, 2019, Preston Johnson, Jr. of Sugar Land, Texas (replacing Harold K. Berenzweig, M.D. of Fort Worth whose term expired).

Appointed as presiding officer and member to the Correctional Managed Health Care Committee, for a term to expire at the pleasure of the Governor, Rodney D. Burrow, M.D. of Pittsburg, Texas (replacing Margarita de la Garza-Graham, M.D. of Tyler whose term expired).

Appointed to the State Employee Charitable Campaign Policy Committee, for a term to expire September 1, 2020, Alicia G. Key Ellison of Dripping Springs, Texas (Ms. Key Ellison is being reappointed).

Appointed to the State Employee Charitable Campaign Policy Committee, for a term to expire September 1, 2020, Tabatha C. Vasquez of Manor, Texas (Ms. Vasquez is being reappointed).

Appointed as presiding officer to the Finance Commission of Texas, for a term to expire at the pleasure of the Governor, Paul W. Plunket, III of Dallas, Texas (Mr. Plunket is replacing Stacy G. London of Houston as presiding officer).



THE ATTORNEY GENERAL

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

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

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

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

Opinions

Opinion No. KP-0222

The Honorable Charles Perry
Chair, Committee on Agriculture, Water, and Rural Affairs
Texas State Senate

Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether recreational vehicle park guests are licensees or tenants
(RQ-0222-KP)

S U M M A R Y

An agreement between a recreational vehicle park and a guest staying on the premises in a recreational vehicle may establish a landlord-tenant relationship, a license, or other legal relationship depending on its terms.

Opinion No. KP-0223

The Honorable Roberto Serna
293rd Judicial District Attorney
458 Madison Street
Eagle Pass, Texas 78852

Re: Whether an employee of the Eagle Pass Water Works System is a municipal employee for purposes of section 392.031 of the Local Government Code, which prohibits a municipal officer or employee from being appointed a commissioner to a municipal housing authority (RQ-0224-KP)

S U M M A R Y

Absent facts and circumstances establishing that the City of Eagle Pass possesses an express or implied contractual right of control over the work of a person employed by the Eagle Pass Water Works System, a court would likely determine such a person is not an employee of the City of Eagle Pass for purposes of section 392.031 of the Local Government Code.

Opinion No. KP-0224

The Honorable Joe Moody
Chair, Committee on Criminal Jurisprudence
Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority and process for removing historical plaques in the Texas Capitol Complex (RQ-0226-KP)

S U M M A R Y

The Legislature authorized installation of the Children of the Confederacy plaque inside the Capitol in 1959, and it likewise possesses authority to remove or relocate the plaque by adopting a resolution directing its removal or relocation.

Alongside the Legislature, section 2166.5011 of the Government Code authorizes the State Preservation Board and the Texas Historical Commission to remove or relocate monuments or memorials such as the plaque. Board rules establish a procedure for requesting a change to contents of the Capitol.

Whether and how to address a request for removal or relocation of the plaque is a discretionary function of the Legislature, the Board, or the Commission, and a court is unlikely to grant mandamus relief in such circumstances.

Opinion No. KP-0225

The Honorable Kelly Hancock
Chair, Committee on Business & Commerce
Texas State Senate

Post Office Box 12068
Austin, Texas 78711-2068

Re: Applicability of Education Code section 44.043 to a school district's consideration of a vendor's or person's relationship with a charter school (RQ-0227-KP)

S U M M A R Y

A court would likely conclude that Education Code section 44.043 prohibits a school district, in its procurement efforts, from taking into account a vendor's or person's relationship with an organization. The scope of subsection 44.043(b) includes a business relationship between a vendor and an organization, and the term "organization" in subsection 44.043(b) includes charter schools.

With respect to a procurement or construction for a public work or public improvement, a court would likely determine that section 44.043 applies to all aspects of the procurement process from the beginning of the process to any subsequent contracts or agreements. Outside of the

public work or improvement project, a court would likely find that section 44.043 applies to each procurement of goods or services or award of contract.

Section 44.043 applies to procurement activities authorized by any statute authorizing a school district's procurement.

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

TRD-201805033
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: November 28, 2018



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request/Questions

Whether a public officer may use government resources for political advertising. (SP-14). A summary of the question addressed in the advisory opinion with this same identifying number (SP-14) was published in the June 22, 2018, issue of the *Texas Register* (43 TexReg 3955); the language of the summary has now changed.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201805056
Seana Willing
Executive Director
Texas Ethics Commission
Filed: November 28, 2018

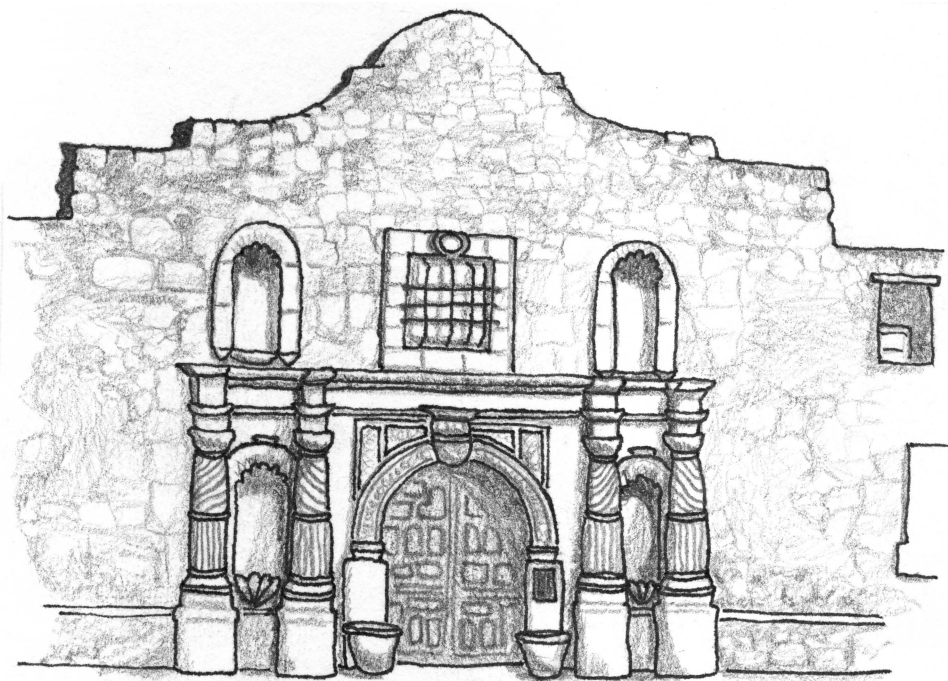
◆ ◆ ◆
Whether an associate judge may wear judicial robes and use the title "associate judge" in political advertising. (SP-15)

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201805057
Seana Willing
Executive Director
Texas Ethics Commission
Filed: November 28, 2018

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 90. HUMAN TRAFFICKING PREVENTION BUSINESS PARTNERSHIP

The Office of the Secretary of State (hereinafter referred to as "the Office") proposes to repeal and replace Chapter 90, relating to the Human Trafficking Prevention Business Partnership, by proposing the repeal of 1 TAC §§90.1 - 90.5, and the concurrent proposal of new §§90.1 - 90.5. The repeal and replacement of Chapter 90 is proposed to restructure the partnership to provide for two tiers instead of one tier of participation and to provide updated terminology and requirements in an effort to increase participation in the partnership.

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

Section 90.1 of the proposed rules sets forth key definitions used throughout the amended chapter.

Section 90.2 of the proposed rules sets forth the two tiers at which a corporation or private entity can participate in the partnership.

Section 90.3 of the proposed rules sets forth the requirements for participating in the partnership at the Associate level.

Section 90.4 of the proposed rules sets forth the requirements for participating in the partnership at the Partner level.

Section 90.5 of the proposed rules sets forth the process for renewing the certificate of association and recognition.

FISCAL NOTE

Briana Godbey, Legal Manager of the Business & Public Filings Division of the Office of the Texas Secretary of State, has determined that for each year of the first five years that the sections are in effect, there are no expected fiscal impacts on state or 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 clarify the procedures and increase the opportunities to participate in the Partnership. By increasing participation, there will be an increase in awareness and prevention of human trafficking in the business community.

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

As required by Government Code §2006.002(c), the Office has determined that the proposed sections will not have an adverse economic effect on small or micro businesses or on rural communities. The proposed rules set forth the requirements for participating in the Human Trafficking Prevention Business Partnership Program. This is a program that provides participating corporations and private entities that engage in voluntary efforts to prevent and combat human trafficking with a certificate of recognition and opportunity to be involved in the partnership. As the Office has determined that the proposed sections will have no adverse economic effect on small or micro businesses or on rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

GOVERNMENT GROWTH IMPACT STATEMENT

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. There is no fee for filing an application for certificate of association or certificate of recognition. The proposed changes do include new rules; therefore, by definition, the proposed changes create new regulations. The new regulations have broadened the requirements to make it possible for more corporations and private entities to participate. The proposed changes expand the existing regulations by adding the Associate level which provides an entry level tier for corporations and private entities to be involved in the Partnership. The proposed changes neither increase nor decrease the number of individuals subject to the applicability of the rules. Finally, the proposed changes are not anticipated to have a significant effect on the state's economy.

ANALYSIS UNDER TEX. GOV'T CODE §2001.0045

The Office has determined that Tex. Gov't Code §2001.0045(b) is not applicable. The Human Trafficking Prevention Business Partnership does not impose a cost on a regulated person. As a result, the Agency is not required to take any additional action under Tex. Gov't Code §2001.0045.

COMMENTS

Comments on the proposed repeal and replacement of Chapter 90 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, Monday, January 7, 2019.

1 TAC §§90.1 - 90.5

STATUTORY AUTHORITY

The repeal of 1 TAC §§90.1 - 90.5 is proposed under the authority of §405.023 of the Government Code which authorizes the secretary of state to adopt rules to establish and implement the Human Trafficking Prevention Business Partnership Program.

Cross reference:

Chapter 405, Government Code

§90.1. Definitions.

§90.2. Procedure for Filing an Application for or Renewal of a Certificate of Recognition.

§90.3. Certificate of Recognition.

§90.4. Renewal of Certificate of Recognition.

§90.5. Database of Best Practices.

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 November 26, 2018.

TRD-201805008

Briana Godbey

Manager, Legal Department, Business & Public Filings Division

Office of the Secretary of State

Earliest possible date of adoption: January 6, 2019

For further information, please call: (512) 463-5590



1 TAC §§90.1 - 90.5

STATUTORY AUTHORITY

The concurrent proposal of new §§90.1 - 90.5 is proposed under the authority of §405.023 of the Government Code which authorizes the secretary of state to adopt rules to establish and implement the Human Trafficking Prevention Business Partnership Program.

Cross reference:

Chapter 405, Government Code

§90.1. Definitions.

The following terms as used in this Chapter shall have the following meanings:

(1) Commercial sex industry--A commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

(2) Corporation--A domestic or foreign for-profit corporation, limited partnership, limited liability company, professional association, or cooperative association which is governed under the Texas Business Organizations Code, federal law, or the law of another state or nation.

(3) Human Trafficking--All offenses referred to in Chapter 20A of the Texas Penal Code.

(4) Partnership--The Human Trafficking Prevention Business Partnership, as established by §405.023 of the Texas Government Code.

(5) Private Entity--Bank, trust company, savings and loan association or company, insurance company, reciprocal or interinsurance exchange, railroad company, cemetery company, government-regulated cooperative, stock company, abstract and title insurance company, or other organization that engages in for-profit activities through the use of employees.

(6) Sexual conduct--Sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse.

(7) Zero Tolerance Policy--A zero tolerance policy towards human trafficking includes, at minimum:

(A) Complying with applicable federal and state human trafficking laws and regulations;

(B) Reviewing the business's supply lines, supplies, agents, subcontractors, other inputs, and business related facilities to assess areas that might be vulnerable to human trafficking and taking appropriate action to address negative findings, including but not limited to adopting language in supplier contracts regarding the corporation or private entity's human trafficking policies, and encouraging the supplier to abide by these same policies;

(C) Prohibiting employees from withholding identity or immigration documents, such as a passport or driver's license, from a worker, and encouraging agents and subcontractors to adopt similar policies; and

(D) Prohibiting the expenditure of any business funds for the purpose of patronizing a business that is part of the commercial sex industry or use of business resources to:

(i) engage in sexual conduct that violates state or federal law; or

(ii) operate a business that is part of the commercial sex industry.

§90.2. Certificates and Terms of Registration.

(a) Corporations and private entities can become involved in the partnership at two different levels.

(1) Corporations and private entities that meet the requirements of §90.3 of this title (relating to Procedure for Filing an Application for a Certificate of Association) may be involved as associates of the partnership.

(2) Corporations and private entities that meet the requirements of §90.4 of this title (relating to Procedure for Filing an Application for a Certificate of Recognition) may be involved as partners of the partnership.

(b) Each certificate issued under this chapter (including certificates of recognition or association) is valid for three years, and may be renewed for additional terms of three years, upon application by the recipient in accordance with this chapter.

§90.3. Procedure for Filing an Application for a Certificate of Association.

(a) A corporation or private entity that applies to be an associate of the partnership must submit to the secretary of state, on a form provided by the secretary and supported by additional documentation, if required, information demonstrating that the applicant:

(1) prohibits the expenditure of any business funds for the purpose of patronizing a business that is part of the commercial sex industry or use of business resources to:

(A) engage in sexual conduct that violates state or federal law, or

(B) operate a business that is part of the commercial sex industry;

(2) has adopted a policy aimed at reducing human trafficking and includes information about this policy in new hire materials or training programs;

(3) has made training resources about recognizing and addressing human trafficking available to its employees and references the resources in new hire or employee training programs;

(4) has included language in supplier contracts regarding the corporation or private entity's human trafficking policies, and encourages suppliers to abide by these same policies;

(5) agrees to participate in at least one public awareness or education campaign involving human trafficking within 36 months of receipt of the certificate of association;

(6) agrees to share with the secretary of state best practices that the entity uses in combatting human trafficking, if any; and

(7) agrees to assist the secretary of state in enhancing awareness of the partnership.

(b) Each application for certificate of association must be signed by or on behalf of the applicant and sworn to before a notary public or other person authorized to administer oaths.

(c) If, after review of the corporation's or private entity's application, and any additional documentation requested by the secretary of state, the secretary determines that all requirements set forth in subsections (a) and (b) of this section have been met, the secretary will issue a certificate of association to the applicant and the applicant will be named an associate.

§90.4. Procedure for Filing an Application for a Certificate of Recognition.

(a) A corporation or private entity that applies for a certificate of recognition must submit to the secretary of state, on a form provided by the secretary and supported by additional documentation, if required, information demonstrating that the applicant:

(1) has adopted a Zero Tolerance Policy towards human trafficking;

(2) has taken measures to ensure that the corporation's or private entity's employees comply with the Zero Tolerance Policy. Measures must include, at a minimum:

(A) implementing a mandatory training for all employees aimed at recognizing and addressing human trafficking; and

(B) providing information about applicant's Zero Tolerance Policy to employees and informing employees about possible consequences for not complying with policy.

(3) has participated in a minimum of one public awareness or education campaign in the 12 months prior to submission of the application and plans to participate in at least one public awareness or education campaign each year for the duration of their participation in the partnership;

(4) has enhanced awareness of and encouraged participation in the partnership, or agrees to do so in the future; and

(5) agrees to share with the secretary of state best practices that the applicant uses in combatting human trafficking.

(b) Each application for certificate of recognition must be signed and sworn to before a notary public or other person authorized to administer oaths by or on behalf of the applicant.

(c) If, after review of the corporation's or private entity's application, and any additional documentation requested by the secretary of state, the secretary determines that all requirements set forth in subsections (a) and (b) of this section have been met, the secretary will issue a certificate of recognition to the applicant and the applicant will be named a partner.

§90.5. Renewal of Certificate.

(a) A certificate of recognition or association may be renewed by filing an application for renewal in the same manner and on the same form as if submitting an original application for each type of certificate. The secretary of state will accept applications for renewal not sooner than 90 days before the expiration of the current certificate of recognition.

(b) An application for renewal may only be submitted during the renewal period. An application for renewal submitted before the renewal period begins will be rejected. An application for renewal submitted after the current term of certificate of recognition expires will be treated as a new application.

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 November 26, 2018.

TRD-201805009

Briana Godbey

Manager, Legal Department, Business & Public Filings Division

Office of the Secretary of State

Earliest possible date of adoption: January 6, 2019

For further information, please call: (512) 463-5590



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.4

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.4, Computation of Time; Mailbox Rule. The proposed amendments would provide additional guidance to applicants, license holders, and members of the public and clarify the requirements for computing time under the TALCB Rules.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the pro-

posed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be improved guidance and information for applicants, license holders, and members of the public.

Growth Impact Statement:

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

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as the proposed amendments would simply provide additional guidance and clarify the requirements for computing time under the TALCB Rules.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee; and §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statutes affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.4. *Computation of Time; Mailbox Rule.*

(a) Computation of Time. The following rules apply when computing any time period specified in Chapters 153, 157 or 159, or in any statute that does not specify a method of computing time: ~~In~~ computing any period of time described or allowed by this chapter, by order of the Board, or by any applicable statute, the period shall begin on the day after the act, event or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday nor a legal holiday.]

- (1) Exclude the day of the event that triggers the time period;
- (2) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- (3) Include the last day of the period, except if the last day of the period is a Saturday, Sunday, or legal holiday, the period contin-

ues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(4) Board office closed or inaccessible. If the Board's office in Austin is closed or inaccessible on the last day of the period as computed under subsection (a)(3) of this section, then the time period is extended to the first day the Board is open and accessible that is not a Saturday, Sunday, or legal holiday.

(b) Mailbox rule.

(1) Service by mail is complete upon deposit of the notice in a prepaid, properly addressed envelope in a post office or official depository under the care and custody of the United States Postal Service.

(2) Service by electronic mail is complete upon sending an email to the respondent's or applicant's email address as shown in the Board's records.

(3) Presumption of receipt. Unless proven by evidence submitted to the contrary, a rebuttable presumption that respondent or applicant received proper notice from the Board will arise:

(A) immediately after sending electronic mail to the respondent's or applicant's email address as shown in the Board's records; or

(B) three business days after the date the notice is deposited with the United States Postal Service.

(4) Failure to claim or refusal of properly addressed certified or registered mail does not support a finding of nonreceipt.

(c) Definitions. For purposes of this section, the following definitions apply:

(1) Last day - Unless a different time is set in statute or Board order, the last day ends:

(A) For electronic filing, at midnight in the Board's time zone;

(B) For filing by other means, when the Board's office is scheduled to close.

(2) Next day - The next day is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(3) Legal holiday - the term "legal holiday" includes:

(A) a national holiday as defined in Government Code §662.003(a);

(B) a state holiday as defined in Government Code §662.003(b); and

(C) any day declared a holiday by the President or the Governor.

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 November 19, 2018.

TRD-201804969

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: January 6, 2019

For further information, please call: (512) 936-3652

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CHAPTER 159. RULES RELATING TO THE
PROVISIONS OF THE TEXAS APPRAISAL
MANAGEMENT COMPANY REGISTRATION
AND REGULATION ACT

22 TAC §159.104

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.104, Primary Contact; Appraiser Contact; Contact Information. The proposed amendments would allow appraisal management companies (AMCs) to designate more than one controlling person. This change is consistent with Chapter 1104, Texas Occupations Code, and would expand the pool of candidates eligible to serve as a member of the AMC Advisory Committee under Chapter 1103, Texas Occupations Code.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be consistency with the statute and an expanded pool of candidates eligible to serve as a member of the AMC Advisory Committee.

Growth Impact Statement:

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

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as the proposed amendments align this section with the statute and expand the pool of candidates eligible to serve as a member of the AMC Advisory Committee.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov.

The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.104. Primary Contact; Appraiser Contact; Controlling Person; Contact Information.

(a) Contact Information. For purposes of conducting business with the Board and receiving correspondence, service of documents, or notices from the Board, each applicant or license holder must provide the Board with the following contact information for its primary contact and appraiser contact:

- (1) mailing address;
- (2) phone number; and
- (3) email address.

(b) Designation of additional controlling persons.

(1) An applicant or license holder may designate additional controlling persons:

(A) on the applicant's initial license application or renewal form; or

(B) by filing the appropriate form with the Board.

(2) An applicant or license holder must notify the Board within 10 days if a person designated as an additional controlling person ceases to serve in that role.

(c) ~~[(b)]~~ An applicant or license holder must give the Board written notice of any change to the contact information for its primary contact, ~~or~~ appraiser contact, or additional controlling persons, if any, within 10 days of the change.

(d) ~~[(e)]~~ If a license holder's primary contact or appraiser contact changes, the license holder must give the Board written notice of the change, including all information required by this section and §1104.103(b)(4) and (6) of the AMC Act, and, if appropriate, documentation that the person is qualified to serve under §1104.104(b) of the AMC Act, within 10 days of the change.

(e) ~~[(d)]~~ A license holder must give the Board written notice within 10 days if its primary contact or appraiser contact ceases to serve in that role and a qualified replacement is not immediately named. If a license holder's primary contact or appraiser contact ceases to serve in that role and the license holder does not give the Board written notice of a replacement, the license holder will be placed on inactive status.

(f) ~~[(e)]~~ A primary contact who assumes that role during the term of the registration must provide the Board written consent to a criminal history background check, as required by §1104.102 of the AMC Act. If the person does not satisfy the Board's moral character requirements, the Board will remove the person from its records and the license holder will be placed on inactive status. Such a decision by the Board may be reviewed and reconsidered by the Commissioner if the license holder submits a written request for reconsideration within 10 days of notice that the person does not qualify to serve as primary contact. The license holder will remain on inactive status while the request for reconsideration is pending.

(g) [(f)] The appraiser contact must hold an active, current license issued by an appraiser regulatory agency within the jurisdiction of the Appraisal Subcommittee.

(h) [(g)] The Board will send all correspondence and serve all required notices and documents by sending such items to the mailing or email address of the applicant's or license holder's primary contact as shown in the Board's records.

(i) [(h)] If an applicant or license holder fails to update the contact information for its primary contact, [ø] appraiser contact, or additional controlling persons, if any, the contact information for these individuals is the last known contact information provided to the Board and shown in the Board's records.

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 November 19, 2018.

TRD-201804970

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: January 6, 2019

For further information, please call: (512) 936-3652



PART 9. TEXAS MEDICAL BOARD

CHAPTER 194. MEDICAL RADIOLOGIC TECHNOLOGY

SUBCHAPTER A. CERTIFICATE HOLDERS, NON-CERTIFIED TECHNICIANS, AND OTHER AUTHORIZED INDIVIDUALS OR ENTITIES

22 TAC §§194.6, 194.10, 194.12, 194.13, 194.23

The Texas Medical Board (Board) proposes amendments to Chapter 194, relating to Medical Radiologic Technology, §§194.6, 194.10, 194.12, 194.13, 194.23.

The amendments to §194.6, relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry, make several changes to temporary certification requirements, language related to examinations required for registration as an NCT or general or limited certification, and otherwise are proposed to correct typographical errors and improve the clarity of the rule.

Amendments propose repealing language requiring temporary limited certification in order for an applicant to attempt passage of a limited examination. Amendments add language allowing such applicants to qualify for exam attempts prior to program completion through a simplified application process for obtaining approval. Other related amendments propose to eliminate language providing for temporary limited certification solely upon successful completion of a limited medical radiologic program. These amendments are proposed in order to expedite limited certificate applicants' ability to take the appropriate limited examination, thereby increasing such applicants' ability to pass and obtain full limited certification more quickly. Further, the amend-

ments would result in eliminating an individual's ability to perform limited medical radiologic procedures prior to successful examination passage, increasing public safety. Temporary limited and general certificates and temporary registration as an NCT would remain as an option for those applicants who meet certain requirements.

Amendments propose to add language clarifying that all applicants for certification or registration will be required to pass the Texas jurisprudence examination. Other amendments propose to repeal language requiring that an applicant pass the jurisprudence examination within three attempts. The changes are proposed to align the rules with recent rule amendments repealing jurisprudence exam attempt limits for individuals applying for medical licensure, made pursuant to Senate Bill 674 (85th Legislature, Regular Session). It is the Board's interpretation that SB 674 is intended to eliminate passage attempt limitations for the jurisprudence examination for all applicants applying for licensure under the Texas Medical Board and Advisory Boards' jurisdiction.

The amendments to §194.10, relating to Retired Certificate or NCT General Registration Permit, proposes to repeal language requiring retired certificate holders or NCTs who wish to return to active status to provide professional evaluations from each employment held before his or her certificate or registration permit was placed on retired status.

The amendments to §194.12, relating to Standards for the Approval of Certificate Program Curricula and Instructors, propose to require all limited certificate programs to obtain accreditation by board recognized national or regional accrediting entities in order to obtain board approval. Such amendments will ensure that staff resources are efficiently used, while maintaining the rigorosity of the approval process. Further, all currently approved limited training programs have such accreditation status, meaning that the effect of adopting such amendments will have minimal cost impact on such programs, if any.

The amendments to §194.13, relating to Mandatory Training Programs for Non-Certified Technicians, propose to amend the rules related to requirements for mandatory training programs for non-certified technicians for the purpose of providing clarity on required processes for approval and renewal procedures related to programs and instructors.

The amendments to §194.23, relating to Criminal Backgrounds, propose to amend the rules so that language is added for clarity and consistency.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to improve the efficiency and rigorosity of the board's regulatory program for granting authorization related to the performance of medical radiologic technology procedures and to have clear and consistent rules.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal impact or effect on government growth as a result of enforcing the sections as proposed.

There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the pro-

posed rule amendments and determined that for each year of the first five years the proposed amendments will be in effect:

- (1) there will be no effect on small businesses, micro businesses, or rural communities; and
- (2) the agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

- (1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is none;
- (2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is none;
- (3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is none; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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

- (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 create new regulations.
- (6) The proposed rules expand existing regulations. The proposed rules limit existing regulations.
- (7) The proposed rules do not increase or decrease the number of individuals subject to the rules applicability.
- (8) The proposed rules do 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, 601.052, which provides authority for the Board to recommend rules to establish licensing and other fees and recommend rules necessary to administer and enforce this chapter. The amendments are further authorized under S.B. 674 (85th Legislature, R.S.).

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

§194.6. Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry.

- (a) - (b) (No change.)
- (c) General Requirements.

(1) Except as otherwise required in this section, an applicant for temporary or regular certification as an [a] MRT or LMRT, or registration as an [a] NCT must:

- (A) graduate from high school or its equivalent as determined by the Texas Education Agency;
- (B) attain at least 18 years of age;
- (C) submit an application on a form prescribed by the board;
- (D) pay the required application fee, as set forth under Chapter 175 of this title (relating to Fees and Penalties);
- (E) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation;
- (F) certify that the applicant is mentally and physically able to perform radiologic procedures;
- (G) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked or suspended;

(H) not have proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to perform radiologic procedures in the state, a Canadian province, or the uniformed service of the United States in which it was issued;

(I) not have pending any prosecution against applicant in any state, federal, or international court for any offense that under the laws of this state is a felony, or an offense that is a misdemeanor of moral turpitude;

(J) be of good professional character as defined under §194.2 of this chapter (relating to Definitions);

(K) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications; and

(L) meet any other requirement established by rules adopted by the board.

(2) The board retains the discretion to consider the nature of any final disciplinary action, other than suspension or revocation, when determining whether to issue the certificate or other authorization.

(d) Additional Requirements for Specific Certificate Types or Placement on the Board's Non-Certified Technician General Registry.

(1) General medical radiologic technologist certificate. In addition to meeting requirements under subsection (c) of this section, to qualify for a general certificate, an applicant must pass the jurisprudence examination in accordance with subsection (e) of this section, and meet at least one of the following requirements:

(A) possession of current national certification as a registered technologist, radiographer, radiation therapist, or nuclear medicine technologist by ARRT;

(B) successful completion of the ARRT's examination in radiography, radiation therapy, or nuclear medicine technology;

(C) possession of current national certification as a nuclear medicine technologist by the NMTCB;

(D) successful completion of the NMTCB's examination in nuclear medicine technology; or

(E) current licensure, certification, or registration as a medical radiologic technologist in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or are substantially equivalent to the requirements for Texas general certification.

(2) Limited Medical Radiologic Technologist Certificate [~~Limited medical radiologic technologist certificate~~]. In addition to meeting requirements under subsection (c) of this section, to qualify for a limited certificate, an applicant must meet at least one of the following requirements:

(A) the successful completion of a limited program [~~course of study~~] as set out in §194.12 of this chapter (relating to Standards for the Approval of Certificate Program Curricula and Instructors) and the successful completion of the jurisprudence examination and appropriate limited examination in accordance with subsection (e) of this section;

(B) current licensure, certification, or registration as an LMRT in another state, the District of Columbia, or a territory of the United States of America whose requirements are more stringent than or substantially equivalent to the requirements for Texas limited certification and successful completion of the jurisprudence examination in accordance with subsection (e) of this section; or

(C) current general certification as an MRT issued by the board. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested.

(3) Temporary General Medical Radiologic Technologist Certificate.

(A) The board may issue a temporary general certificate to an applicant who, in [Temporary general medical radiologic technologist. In] addition to meeting the requirements of subsection (c) of this section: [; to qualify for a temporary general certificate, an applicant must meet at least one of the following requirements:]

(i) [(A)] has successfully completed [successful completion of] a course of study in radiography, radiation therapy, or nuclear medicine technology which is accredited by an agency which is recognized by:

(I) [(i)] the Council for Higher Education Accreditation, including but not limited to: the Joint Committee on Education in Nuclear Medicine Technology (JRCNMT); or

(II) [(ii)] the United States Secretary of Education, including, but not limited to: the Joint Review Committee on Education in Radiologic Technology (JRCERT), Accrediting Bureau of Health Education Schools, or the Southern Association of Colleges and Schools, Commission on Colleges;

(ii) [(B)] is [be] approved by the ARRT as examination eligible;

(iii) [(C)] is [be] approved by the NMTCB as examination eligible;

(iv) [(D)] is [be] currently licensed or otherwise registered as an MRT in another state, the District of Columbia, or a ter-

ritory of the United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the board; ~~or~~

(v) [(E)] has [have] completed education, training and clinical experience which is substantially equivalent to that of an accredited educational program as listed in clause (i) of this subparagraph [in radiography as listed in subparagraph (A) of this paragraph];

(vi) meets all the qualifications for a general certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the general certificate to be issued; or

(vii) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary general certificate to remedy active practice issues, the applicant must:

(I) be supervised by a general certificate holder or practitioner (as defined under §194.2 of this chapter) who:

(-a-) holds an active, unrestricted license or certificate in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the general certificate holder or practitioner that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board according to rules adopted by the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary general certificate granted under this paragraph may be valid for not more than one year from the date issued. A temporary general certificate may be revoked at any time the board deems necessary.

(C) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(4) Temporary Limited Medical Radiologic Technologist Certificate.

(A) The board may issue a temporary limited certificate to an applicant who, in [Temporary limited medical radiologic technologist. In] addition to meeting requirements under subsection (c) of this section[; to qualify for a temporary limited certificate, an applicant must meet at least one of the following requirements]:

(i) [(A)] has successfully completed [successful completion of] a limited certificate program in the categories of skull, chest, spine, abdomen or extremities, [which is] approved in accordance with §194.12 of this chapter;

[(B)] current enrollment in a general certificate program approved in accordance with §194.12 of this chapter and the issuance of a certificate of completion by the program signifying completion of classroom instruction, clinical instruction, evaluations and competency testing in all areas included in the limited curriculum; or

(C) be currently licensed or otherwise registered as an LMRT in another state, the District of Columbia, or a territory of the

United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the board.]

(ii) meets all the qualifications for a limited certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the limited certificate to be issued; or

(iii) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary limited certificate to remedy active practice issues, the applicant must:

(I) be supervised by a general certificate holder or practitioner ("practitioner" is defined under §194.2 of this chapter) who:

(-a-) holds an active, unrestricted license or certificate in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the general certificate holder or practitioner that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary limited certificate granted based upon successful completion of approved programs under subparagraph (A)(i) of this paragraph may not be valid for more than six months from the date issued, unless the applicant has met all qualifications for the limited certificate, and is on the agenda for the next scheduled meeting of the board for the limited certificate to be issued.

(C) Temporary limited certificates granted for the purpose of remedying active practice deficiencies under subparagraph (A)(iii) of this paragraph may not be valid for more than 12 months from the date of issue.

(D) A temporary limited certificate may be revoked at any time the board deems necessary.

(E) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(5) Provisional Medical Radiologic Technologist Certificate [Provisional medical radiologic technologist.

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

(6) Placement on the Non-Certified Technician General Registry.

(A) Registration Required. In accordance with §601.202 of the Act, a person who intentionally uses radiologic technology, other than a certificate holder, physician assistant, registered nurse, or person performing procedures under the supervision of a dentist, must register with the board prior to performing any procedures. [In accordance with §601.202 of the Act, a person who intentionally uses radiologic technology, other than a certificate holder, person performing procedures under the supervision of a dentist, physician

assistant, or registered nurse, must register with the board prior to performing any procedures.]

(B) In addition to meeting the requirements under subsection (c) of this section, to qualify for placement on the board's NCT General Registry, an applicant must successfully complete a training program approved by the board in accordance with §194.13 of this chapter (relating to Mandatory Training Programs for Non-Certified Technicians) and pass the jurisprudence examination in accordance with subsection (e) of this section [or §194.15 of this chapter (relating to Bone Densitometry Training)].

(e) Examinations Required [for Certification].

(1) Jurisprudence examination. An applicant [for a certificate] must pass the jurisprudence examination ("JP exam"), which shall be conducted on the [certification requirements and other] laws, rules, or regulations applicable to the practice of medical radiologic technology [medical radiologic technologist profession] in this state. The JP exam shall be developed and administered as follows:

(A) The staff of the Medical Board shall prepare questions for the JP exam and provide a facility by which applicants can take the examination.

(B) An examinee shall not be permitted to bring books, compends, notes, journals, calculators or other documents or devices into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(C) Irregularities during an examination, such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(D) Applicants must pass the JP exam with a score of 75 or better [within three attempts].

[(E) An applicant who is unable to pass the JP exam within three attempts must appear before a committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for certification. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.]

(E) [(F)] A person who has passed the JP exam shall not be required to retake the exam for re-licensure, except as a specific requirement of the board as part of an [agreed] order.

(2) Additional Examinations Required for Certification [Examinations accepted for certification].

[(A) Examination eligibility.

(i) Persons who qualify under subsection (d)(1) of this section are not required to be reexamined for state certification.

(ii) Holders of a temporary general certificate or temporary limited certificate may take the appropriate examination provided the person complies with the requirements of the Act and this chapter.]

(A) [(B)] General Certificate [certificate]. The following examinations are accepted for a general certificate application:

(i) NMTCB examination in nuclear medicine technology; or

(ii) The appropriate ARRT examination in radiography, nuclear medicine technology, or radiation therapy. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the applicant for a general certificate.

(B) ~~(C)~~ Limited Certificate ~~[ertificate]~~.

(i) The following examinations are accepted for a limited certificate application: Successful completion of the appropriate examination, including the core knowledge component, as follows:

(I) skull--the ARRT examination for the limited scope of practice in radiography (skull);

(II) chest--the ARRT examination for the limited scope of practice in radiography (chest);

(III) spine--the ARRT examination for the limited scope of practice in radiography (spine);

(IV) extremities--the ARRT examination for the limited scope of practice in radiography (extremities);

(V) chiropractic--the ARRT examinations for the limited scope of practice in radiography (spine and extremities);

(VI) podiatric--the ARRT examination for the limited scope of practice in radiography (podiatry); or

(VII) cardiovascular--the Cardiovascular Credentialing International invasive registry examination.

(ii) Limited Certification Exam Attempt Authorization.

(I) Individuals enrolled or who have completed an approved limited medical radiologic program, as set forth under §194.12 of this chapter, must apply to the board and obtain authorization in order to attempt passage of accepted examination(s) set forth under subparagraph (B) of this paragraph.

(II) In order to obtain authorization to attempt passage of the exam, an individual must provide the following documentation:

(-a-) Evidence of current enrollment in an approved limited program as set forth by §194.12 of this chapter and an attestation stating that the individual has completed the education components necessary for qualifying the individual to pass the appropriate limited scope examination, signed by the program director or registrar;
or

(-b-) a copy of a certificate of completion or official transcript showing completion of an approved limited program, as set out in §194.12 of this chapter.

(III) Approval to attempt passage of the limited scope examination is not authorization to perform limited medical radiologic technology procedures. An individual must apply for and be granted a temporary or limited or general certificate prior to performing limited medical radiologic technology procedures or meet an exception to such certification requirements provided for under the Act.

(iii) ~~[(iii)]~~ ~~[Applicants]~~ Individuals approved to sit for the limited certification examination will be allowed three attempts to pass the examination~~[-]~~ within one year from the date of the initial authorization granted by the board ~~[issuance of the applicants' temporary limited certificate]~~. Individuals who fail to pass within the required number of attempts or one-year-period will ~~not~~ ~~[no longer]~~ be eligible for additional attempts, except as provided in clause (iv) of this subparagraph ~~[elause (iii) of this paragraph]~~.

~~(iv)~~ ~~[(iii)]~~ Notwithstanding clause ~~(iii)~~~~[(ii)]~~ of this subparagraph, an ~~[applicant]~~ individual who fails to pass the examination within the required number of attempts or within the one-year-period may obtain approval for one additional attempt, if the individual successfully completes a review course of no less than 60 hours of continuing education in length, offered by an approved limited program under §194.12 of this chapter. The additional attempt must be made no later than one year from the date of the board's approval granted. Those failing to ~~[attempt or]~~ pass the examination within the additional one-year period allowed shall no longer be eligible for additional attempts at passage, and shall only be eligible for state examination attempts for the purpose of state limited certification by again meeting the requirements for approval of exam attempt authorization set forth under clause (ii)(II) of this subparagraph ~~[successfully completing an approved program under §194.12 of this chapter]~~.

(3) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s) and application procedures shall be provided by the board or organization administering the examination(s).

(4) Standards of acceptable performance. The scaled score to determine pass or fail performance shall be 75. For the cardiovascular limited certificate, the Cardiovascular Credentialing International examinations (Cardiovascular Science Examination and/or the Invasive Registry Examination as required to obtain the Registered Cardiovascular Invasive Specialist RCIS credential) the scaled score to determine pass or fail performance shall be 70.

(5) Completion of examination application forms. Each applicant shall be responsible for completing and transmitting appropriate examination application forms and paying appropriate examination fees by the deadlines set by the board or organization administering the examinations prescribed by the board.

(6) Examination Results.

(A) Notification to examinees. Results of an examination prescribed by the board but administered under the auspices of another organization will be communicated to the applicant by the board, unless the contract between the board and that organization provides otherwise.

(B) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization or otherwise arranging to have examination scores forwarded to the board.

(C) Deadlines. The board shall notify each examinee of the examination results within 14 days of the date the board receives the results. If notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day. The board may require a testing service to notify a person of the results of the person's examination.

(7) Refunds. Examination fee refunds will be in accordance with policies and procedures of the board or the organization prescribed by the board to administer an examination. No refunds will be made to examination candidates who fail to appear for an examination.

(f) - (o) (No change.)

§194.10. *Retired Certificate or NCT General Registration Permit.*

(a) The registration fee shall not apply to retired certificate or NCT general registration permit holders.

(b) To become exempt from the registration fee due to retirement:

(1) the certificate or permit holder's current certificate or permit must not be under an investigation or order with the board or otherwise be restricted; and

(2) the certificate or permit holder must request in writing on a form prescribed by the board for his or her certificate or permit to be placed on official retired status.

(3) The following restrictions shall apply to certificate or permit holders whose certificates or permits are on official retired status:

(A) the certificate or permit holder must not engage in clinical activities requiring a certificate or permit in Texas or any state; and

(B) the certificate or permit holder's certificate or permit may not be endorsed to any other state.

(c) A certificate or permit holder may return to active status by:

(1) applying to the board;

(2) paying an application fee equal to an application fee for a certificate or permit holder;

(3) complying with the requirements for certificate or permit renewal under the Act;

(4) providing current verifications from each state in which the certificate or permit holder holds a license, certificate, permit, or registration, as applicable;

(5) providing current verifications of certification by ARRT or NMTCB, as applicable; and

~~[(6) submitting professional evaluations from each employment held after the license was placed on inactive status; and]~~

(6) ~~[(7)]~~ complying with subsection (d) of this section.

(d) Licensure Committee or Executive Director Recommendations.

(1) The request of a certificate or permit holder seeking a return to active status whose certificate or permit has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to the following terms:

(A) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting organization such as SACS, or by JRCERT, JRCNMT, JTCCVT, CCE, ABHES, or ASRT;

(B) current certification by ARRT or NMTCB, as applicable;

(C) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(D) remedial education; and

(E) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(2) The request of a certificate or permit holder seeking a return to active status whose certificate has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee of the board, for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to those options provided in paragraph (1)(A) - (E) of this subsection.

(e) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the certificate or permit holder at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance and in writing by the executive director or the Licensure Committee, or other designee(s) determined by majority vote of the board.

(f) A retired certificate or permit holder who has obtained an exemption from the registration fee as provided for under this section, may be subject to disciplinary action under the Act, §601.302, based on unprofessional [~~or dishonorable~~] conduct [~~likely to deceive, defraud, or injure the public~~] if the certificate holder engages in activities requiring a certificate or permit.

(g) A retired certificate or permit holder who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act, §601.302, in addition to any civil or criminal actions provided for by state or federal law.

§194.12. Standards for the Approval of Certificate Program Curricula and Instructors.

(a) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by accrediting organizations recognized by:

(1) the Council for Higher Education Accreditation, including but not limited to: the JRCNMT; or

(2) the United States Secretary of Education, including, but not limited to JRCERT, ABHES, or SACS.

(b) Limited Certificate Programs. All programs and curricula training individuals to perform limited radiologic procedures must:

(1) be accredited by JRCERT, ABHES, or SACS to offer a limited curriculum in radiologic technology; or

(2) be accredited by JRCCVT to offer a curriculum in invasive cardiovascular technology. [~~;~~ ~~or~~]

~~[(3) be approved by the board under subsections (d) - (g) of this section prior to the program's start date and be offered within the geographic limits of the Texas.]~~

(c) Application procedures for [~~limited~~] certificate programs [~~accredited by JRCERT, ABHES, SACS, or JRCCVT~~].

(1) Application shall be made by the program director on official forms available from the board.

(2) The application must be notarized and shall be accompanied by the following items:

(A) the [limited curriculum] application fee, in accordance with Chapter 175 of this title (relating to Fees and Penalties);

(B) a copy of the current accreditation issued to the program by accepted accrediting organizations under subsections (a) - (b) of this section [JRCERT, ABHES, SACS, or JRCCVT]; and

[(C)] a description in narrative and/or table format clearly indicating that the applicable content of the limited certificate program curriculum is equal to the general certificate curriculum; and]

(C) [(D)] an agreement to allow the board to conduct an administrative audit of the program to determine compliance with this section.

[(d)] Application procedures and eligibility requirements for limited certificate programs not accredited.}]

[(1) Documentation Requirements.}]

[(A)] An application shall be submitted to the board on a form prescribed by the board at least 10 weeks prior to the starting date of the program to be offered by a sponsoring institution. The application must be completed and signed by the program director of the sponsoring institution's program. Program directors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.}]

[(B)] All official application forms must be notarized and must be accompanied by the application fee in accordance with Chapter 175 of this title.}]

[(C)] An original copy of the application and supporting documentation must be submitted in one or more three-ring binders, with all pages consecutively numbered and containing legible information. Each application binder must be organized with a table of contents and tabbed sections clearly marked so as to correspond with the required items listed in this section. If any listed item is inapplicable, a tab designated to that section must be included, and must contain at a minimum a statement explaining the inapplicability. All materials provided must contain typewritten information, double-spaced, and clearly legible. All signatures on the official forms and supporting documentation must be originals. Photocopied signatures will not be accepted.}]

[(D)] Notices will be mailed to applicants informing the applicant of any items lacking.}]

[(2) Content of Application. At a minimum, an applicant must provide the following information.}]

[(A)] the program or course of study's anticipated dates.}]

[(B)] the program or course of study's daily hours.}]

[(C)] the program or course of study's location, mailing address, phone, and facsimile numbers.}]

[(D)] a list of instructors approved by the board, in accordance with subsection (f) of this section, and any other persons responsible for the program's operation, including management and administrative personnel. The list must include specific information as to each instructor's assigned course of instruction, or the area(s) of responsibility for the non-instructional staff.}]

[(E)] a list of clinical facilities, written agreements on forms prescribed by the board from clinical facilities signed by the program director and the chief executive officer(s) of each facility, and

clinical schedules, including the following items identified for each clinical site utilized. A clinical facility which is not listed on the application may not be utilized for a student's clinical practicum until the board has accepted the additional clinical facility in accordance with paragraph (6) of this subsection. The items are:}]

[(i)] the number and types (name brands and model numbers) of radiologic equipment to be utilized in the limited curriculum.}]

[(ii)] a copy of the current registration(s) for the radiologic equipment from the Texas Department of State Health Services Radiation Control Program (DSHS).}]

[(iii)] the number and location(s) of examination rooms available.}]

[(iv)] whether or not the clinical facility is accredited by the Joint Commission or certified to participate in the federal Medicare program, and if required, is licensed by the appropriate statutory authority. For example, if the facility is an ambulatory surgical center, licensure by DSHS is required.}]

[(v)] an acknowledgment that students may only perform radiologic procedures under the supervision of a practitioner, a limited medical radiologic technologist (LMRT) employed at the clinical facility or medical radiologic technologist (MRT) employed at the clinical facility.}]

[(vi)] certificate numbers of the LMRTs or MRTs who will supervise the students at all times while performing radiologic procedures.}]

[(vii)] an acknowledgment that the students in a limited curriculum program in the categories of skull, chest, spine, abdomen, extremities, chiropractic, or podiatric will not perform procedures utilizing contrast media, mammography, fluoroscopy, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum. and]

[(viii)] an acknowledgment that the students in a limited curriculum program in the cardiovascular category shall not perform mammography, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum. Such students may only perform radiologic procedures of the cardiovascular system which involve the use of contrast media and fluoroscopic equipment.}]

[(F)] clearly defined and written policies regarding admissions, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, and graduation which are provided to all prospective students prior to registration and by which the program director shall administer the program. The admission requirements shall include the minimum eligibility requirements for certification in accordance with §194.6 of this chapter (relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry).}]

[(G)] the name of the program director who is an approved instructor in accordance with subsection (f) of this section, and who has not less than three years of education or teaching experience in the appropriate field or practice.}]

[(H)] a letter of acknowledgment and a photocopy of the current Texas license from a practitioner in the appropriate field of practice who is knowledgeable in radiation safety and protection and who shall be known as the designated medical director. The practitioner shall work in consultation with the program director in developing goals and objectives and in implementing and assuring the quality of the program.}]

{(I) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section, indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32, or verification of accreditation by the Texas Higher Education Coordinating Board; and}

{(J) the correct number of students to be enrolled in each cycle of the program, and if more than one cycle will be conducted concurrently, the maximum number of students to be enrolled at any one time.}

{(3) All applications must identify the type of curriculum according to the limited categories in accordance with §194.6 of this chapter. Each application must be accompanied by an outline of the curriculum and course content which clearly indicates that students must complete a structured curriculum in proper sequence according to subsection (e) of this section. If the curriculum differs from that set out in subsection (e) of this section, a typed comparison in table format clearly indicating how the curriculum differs from the required curriculum, including the number of hours for each topic or unit of instruction, shall be included.}

{(4) In making application to the board, the program director shall agree in writing to:}

{(A) provide a ratio of not more than three students to one full-time certified medical radiologic technologist engaged in the supervision of the students in the clinical environment;}

{(B) provide on-site instruction and direction by a practitioner for students when performing radiologic procedures on human beings;}

{(C) prohibit students from being assigned to any situation where they would be required to apply radiation to a human being while not under the on-site instruction or direction of a practitioner;}

{(D) prohibit intentional exposure to human beings from any source of radiation except for medically prescribed diagnostic purposes;}

{(E) provide appropriate facilities, sufficient volume of procedures, and a variety of diagnostic radiologic procedures to properly conduct the course. Facilities, agencies, or organizations utilized in the program shall be accredited or certified and licensed by the appropriate agencies. Equipment and radioactive materials utilized in the program shall be used only in facilities registered or licensed by the DSHS's Radiation Control Program;}

{(F) keep an accurate record of each student's attendance and participation, evaluation instruments and grades, clinical experience including radiation exposure history, and subjects completed for not less than five years from the last date of the student's attendance. Such records shall be made available to examining boards, regulatory agencies, and other appropriate organizations, if requested;}

{(G) issue to each student, upon successful completion of the program, a written statement in the form of a diploma or certificate of completion, which shall include the program's name, the student's name, the date the program began, the date of completion, the categories of instruction, and the signatures of the program director or independent sponsor and medical director/program advisor;}

{(H) site inspections by board representatives to determine compliance and conformity with the provision of this section will be at the discretion of the board;}

{(I) understand and recognize that the graduates' success rate on the prescribed examination will be monitored by the board

and utilized as a measure for rescinding approval. In addition to this criteria, the board may rescind approval in accordance with §194.22 of this chapter (relating to Grounds for Denial of Certificate, Registration, or Other Approval, and for Disciplinary Actions); and}

{(J) comply with the Texas Regulations for the Control of Radiation, including but not limited to, personnel monitoring devices for each student upon the commencement of the clinical instruction and clinical experience.}

{(5) A site visit may be necessary to grant approval of the program. If a site visit is required, a site visit fee must be paid in accordance with Chapter 175 of this title.}

{(6) Following program approval, one or more written requests for amendment(s) shall be submitted to and approved by the board in advance of taking the anticipated action. The request to add or drop an instructor, clinical site, category of instruction, program director or other change, shall be accompanied by the limited curriculum program amendment application and fee in accordance with Chapter 175 of this title.}

{(e) Program Curricula Requirements. Each student must complete a curriculum which meets or exceeds the following requirements:}

{(1) at least 132 clock hours of basic theory or classroom instruction in the categories of skull, chest, extremities, spine, and chiropractic practice, and not less than 66 clock hours of basic theory instruction for podiatry is required. The required clock hours of basic theory/classroom instruction need not be repeated if two or more categories of curricula are completed simultaneously or to add a category to a temporary limited or limited certificate. Pediatric instruction shall be included in the hours of training. The following subject areas and minimum number of hours must be included in all programs and instructor directed. The subject areas and minimum clock hours for each shall be:}

{(A) radiation protection for the patient, self, and others--40;}

{(B) radiographic equipment, including safety standards, operation, and maintenance--15;}

{(C) image production and evaluation--35;}

{(D) applied human anatomy and radiologic procedures--20;}

{(E) patient care and management essential to radiologic procedures and recognition of emergency patient conditions and initiation of first aid--10;}

{(F) medical terminology--6; and}

{(G) medical ethics and law--6; and}

{(2) a clinical practicum for each category of limited curriculum including pediatrics is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner and an MRT or LMRT in accordance with the following chart.}

{Figure: 22 TAC §194.12(e)(2)}

{(A) The clinical instruction must be concurrent with the classroom instruction, as set out in paragraph (1) of this subsection.}

{(B) The clinical experience must commence immediately following the clinical instruction and be completed within 180 calendar days of the starting date of the clinical experience. Variances from this must be for good cause and approved in advance by the board. A request for a variance must be submitted in writing to the board. For

the purposes of this section, a pregnancy or other medical disability shall constitute good cause.}]

[(C) For the skull category, the 100 hours of clinical experience must include a minimum of four independently performed procedures, with at least one of the four procedures being of the mandible, and the remaining three including the skull (posterior/anterior, anterior/posterior, lateral and occipital), paranasal sinuses, and facial bones. The mandible procedure may be completed by simulation with 90% accuracy. Only one student shall receive credit for any one radiologic procedure performed.}]

[(D) The program director shall be responsible for supervising and directing the evaluation of the students' clinical experience and shall certify in writing that the students have or have not successfully completed the required clinical instruction and clinical experience. Such written documentation must be provided to each student within 14 working days of completion of the clinical experience. Persons who participate in the evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing radiologic procedures. For cardiovascular programs, person(s) who make the final evaluation of students' clinical experience must be MRT(s) or LMRT(s) and have a minimum of two years of practical work experience performing cardiovascular procedures.}]

[(E) A limited medical radiologic technologist may not teach, train, or provide clinical instruction in a program or course of study different from the technologist's current level of certification. An LMRT who holds a limited certificate in spine radiography may not teach, train, or provide clinical instruction in a limited course of study for chest radiography.}]

[(f) Application procedures and eligibility requirements for instructors in limited certificate programs.}]

[(1) Except as otherwise provided, all persons who will provide instruction and training in the limited certificate courses of study or programs must obtain approval by the board prior to initiating instruction or training.}]

[(2) To obtain board approval, all instructor(s) must at a minimum:}]

[(A) submit an application on a form prescribed by the board.}]

[(B) pay the required application fee, as set forth under Chapter 175 of this title.}]

[(C) successfully complete an education program in accordance with this section and not less than six months classroom or clinical experience teaching the subjects assigned.}]

[(D) meet and maintain standards required by a sponsoring institution, if any.}]

[(E) have at least one or more of the following qualifications:}]

[(i) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists (ARRT).}]

[(ii) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training.}]

[(iii) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, DSHS, the Texas Board of Chiropractic Examiners, Texas Medical

Board, Texas State Board of Podiatric Medical Examiners, the Texas Health and Human Services Commission, and the United States Department of Health and Human Services; or}]

[(iv) be a currently licensed medical physicist; and}]

[(F) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.}]

[(3) Documentation Requirements. The applicant must submit satisfactory documentation of the above minimum requirements, as required by the board.}]

(d) [(g)] Procedure for Approval or Denial. [Limited certificate educational program and instructor process approval or denial. The process for approval or denial of applications for program approval are subject to the procedures outlined in §194.6(g) of this chapter.]

(1) Review by the Executive Director.

(A) The executive director or designee shall review applications for approval and may determine whether an applying program is eligible for approval, or refer an application to the Education Committee of the board for review.

(B) If the executive director or designee determines that the applying program clearly meets all approval requirements, the executive director or designee may approve the applicant, to be effective on the date issued without formal board approval.

(C) If the executive director determines that the applying program does not clearly meet all approval requirements prescribed by the Act and this chapter, approval may be issued only upon action by the board following a recommendation by the Education Committee. The Education Committee may recommend to grant or deny the approval request.

(2) Reconsideration of Denials.

(A) Determinations to deny approval of a program may be reconsidered by the Education Committee or the board based on additional information concerning the applying program and upon a showing of good cause for reconsideration.

(B) A decision to reconsider a denial determination shall be a discretionary decision by the Education Committee, based on consideration of the additional information. Requests for reconsideration shall be made in writing by the applying program director.

(e) Grounds for Denial or Withdrawal of Approval.

(1) Failure of the applying or approved training program to comply with the provisions of this chapter or the Act may be grounds for denial or withdrawal of the approval of the training program.

(2) In the event that the board receives complaints against an approved program, such information shall be referred to the board's investigation department.

(3) Any material misrepresentation of fact by an approved or applying program in any information required to be submitted to the board is grounds for denial or withdrawal of approval.

(4) The board may deny or withdraw its approval of a program after giving the program written notice setting forth its reasons for denial or withdrawal and after giving the program a reasonable opportunity to be heard by the Education Committee of the board.

(f) Renewal.

(1) The training program director shall be responsible for applying for renewal of the training program's approval. The program director must apply for renewal every three years by submitting the

required form and documents and by paying the required renewal fee to the board on or before the expiration date of the approval.

(2) Failure to submit the renewal form and renewal fee will result in the expiration of the training program's approval. In the case that the approval is expired, to obtain a new approval, the training program must reapply meet all requirements for approval under this section.

(3) A training program which fails to apply for renewal or otherwise holds an expired approval shall cease representing the program as an approved training program. The program director shall notify currently enrolled students that the training program is no longer approved under this section. The notification shall be in writing and must be issued within ten days of the expiration of the approval.

(g) Required Reports to the Board. The program director shall report the following to the board within 30 days after the event:

(1) Any change of address for the physical location of the program; or

(2) any change in accreditation status by an acceptable accrediting organization under subsections (a) - (b) of this section.

§194.13. *Mandatory Training Programs for Non-Certified Technicians.*

(a) General. This section sets out the minimum standards for board approval of mandatory non-certified technician training programs, as required by the Act, §601.201, which are intended to train individuals to perform radiologic procedures which have not been identified as dangerous or hazardous. Non-certified technicians are distinct from individuals performing a radiologic procedure under hardship exemption granted under §194.16 of this chapter (relating to Hardship Exemptions)[Individuals who complete an approved training program may not use that training toward the educational requirements for a general or limited certificate. Before a person performs a radiologic procedure, the person must complete all the hours in subsection (d)(2)(A) - (C) of this section, and at least one unit in subsection (d)(3)(A) - (G) of this section].

[(b) Instructor Direction Required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an approved instructor. No credit will be given for training completed by self-directed study or correspondence.]

[(c) Instructor Qualifications.]

[(1) An instructor(s) shall have education in accordance with §194.12 of this chapter (relating to Standards for the Approval of Certificate Program Curricula and Instructors); not less than six months classroom or clinical experience teaching the subjects assigned; meet the standards required by a sponsoring institution, if any; and meet at least one or more of the following qualifications:]

[(A) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists;]

[(B) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training; or]

[(C) be a practitioner who is in good standing with all appropriate regulatory agencies, including, but not limited to, DSHS, the Texas Board of Chiropractic Examiners, Texas Medical Board, or Texas State Board of Podiatric Medical Examiners, the Texas Health and Human Services Commission, the United States Department of Health and Human Services.]

[(2) An LMRT may not teach, train, or provide clinical instruction in a portion of a training program that is different from the LMRT's level of certification. An LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.]

(b) [(d)] Training Requirements [requirements]. In order to successfully complete a program, each student must complete the following minimum training:

[(1) prerequisites recommended for admission include high school graduation or general equivalency diploma; certified medical assistant; graduation from a medical assistant program; or six months' full time patient care experience under the supervision of a practitioner.]

(1) [(2)] courses which are fundamental to diagnostic radiologic procedures:

(A) radiation safety and protection for the patient, self and others--22 classroom hours;

(B) image production and evaluation--24 classroom hours; and

(C) radiographic equipment maintenance and operation--16 classroom hours which includes at least 6 hours of quality control, darkroom, processing, and Texas Regulations for Control of Radiation; and

(2) [(3)] one or more of the following units of applied human anatomy and radiologic procedures of the:

(A) skull (5 views: Caldwell, Townes, Waters, AP/PA, and lateral)--10 classroom hours;

(B) chest--8 classroom hours;

(C) spine--8 classroom hours;

(D) abdomen, not including any procedures utilizing contrast media--4 classroom hours;

(E) upper extremities--14 classroom hours;

(F) lower extremities--14 classroom hours; and/or

(G) podiatric--5 classroom hours.

(3) Live, In-Person Instructor Direction Required. All hours of the training program completed for the purposes of this section must be live, in-person, and directed by an approved instructor. No credit will be given for training completed by self-directed study, remote learning, or correspondence.

(c) [(e)] Application Procedures and Eligibility Requirements for Training Programs [Application procedures for training programs]. An application shall be submitted to the board at least 30 days prior to the starting date of the training program. [Official application forms are available from the board and must be completed and signed by an approved instructor, who shall be designated as the training program director. The training program director shall be responsible for the curriculum, the instructors, and determining whether students have successfully completed the training program.]

(1) Application shall be made by the program director on official forms available from the board.

[(1) Official application forms must be executed in the presence of a notary public and shall be accompanied by the applica-

tion fee in accordance with Chapter 175 of this title (relating to Fees and Penalties). Photocopied signatures will not be accepted.]

(2) The application must be notarized and shall be accompanied by the following items:

(A) the application fee, in accordance with Chapter 175 of this title (relating to Fees and Penalties); and

(B) an agreement to allow the board to conduct an administrative audit of the program to determine compliance with this section.

~~[(2) Application forms and fees shall be mailed to the address indicated on the application materials. The board is not responsible for lost, misdirected, or undeliverable application forms. An application received without the application fee will be returned to the applicant.]~~

(d) [(f)] Training Program Application Materials [Application materials]. The application shall include, at a minimum:

(1) the beginning date and the anticipated length of the training program;

(2) the number of programs which will be conducted concurrently and whether programs will be conducted consecutively;

(3) the number of students anticipated in each program;

(4) the daily hours of operation;

(5) the location, mailing address, phone and facsimile numbers of the program;

(6) the name of the training program director;

(7) a list of the names of the approved instructors and the topics each will teach; and a list of management and administrative personnel and any practitioners who will participate in conducting the program];

(8) clearly defined and written policies regarding the criteria for admission, discharge, readmission and completion of the program;

(9) evidence of a structured pre-planned learning experience with specific outcomes;

(10) a letter or other documentation from the Texas Workforce Commission, Career Schools and Colleges [Proprietary Schools] Section indicating that the proposed training program has complied with or has been granted exempt status under [the Texas Proprietary School Act,] Texas Education Code, Chapter 132. If approval has been granted by the Texas Higher Education Coordinating Board, a letter or other documentation is not necessary; and

(11) specific written agreements to:

(A) provide the training as set out in subsection (b) [(d)] of this section and provide not more than 75 students per instructor in the classroom;

(B) advise students that they are prohibited from performing radiologic procedures which have been identified as dangerous or hazardous in accordance with §194.17 of this chapter (relating to Dangerous or Hazardous Procedures) unless they become an LMRT, MRT or a practitioner;

(C) use written and oral examinations to periodically measure student progress;

(D) keep an accurate record of each student's attendance and participation in the program, accurate evaluation instruments and

grades for not less than five years. Such records shall be made available upon request by the board or any governmental agency having authority;

(E) issue to each student who successfully completes the program a certificate or written statement including the name of the student, name of the program, dates of attendance and the types of radiologic procedures covered in the program completed by the student;

(F) retain an accurate copy for not less than five years and submit an accurate copy of the document described in subparagraph (E) of this paragraph to the board within 30 days of the issuance of the document to the student; and

(G) permit site inspections by employees or representatives of the board to determine compliance with this section.

(e) Application Procedures and Eligibility Requirements for Instructors.

(1) Except as otherwise provided, all persons who will provide instruction and training in an approved program under this section must obtain approval by the board prior to initiating instruction or training.

(2) To obtain board approval, all individual(s) must at a minimum:

(A) submit an application on a form prescribed by the board;

(B) pay the required application fee, as set forth under Chapter 175 of this title;

(C) successfully complete an education program in accordance with §194.12 of this chapter and not less than six months classroom or clinical experience teaching the subjects assigned;

(D) have at least one or more of the following qualifications:

(i) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists (ARRT);

(ii) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training;

(iii) be a practitioner who is in good standing with all appropriate regulatory agencies, and is not the subject of any disciplinary order; and

(E) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(f) Procedure for Approval or Denial.

(1) Review by the Executive Director.

(A) The executive director or designee shall review applications for approval and may determine whether an applying program or instructor is eligible for approval, or refer an application to the Education Committee of the board for review.

(B) If the executive director or designee determines that the applying program or instructor clearly meets all approval requirements, the executive director or designee may approve the applicant, to be effective on the date issued without formal board approval.

(C) If the executive director determines that the applying program or instructor does not clearly meet all approval requirements prescribed by the Act and this chapter, approval may be issued

only upon action by the board following a recommendation by the Education Committee. The Education Committee may recommend to grant or deny the approval request.

(2) Reconsideration of Denials.

(A) Determinations to deny approval of a program or instructor may be reconsidered by the Education Committee or the board based on additional information concerning the applying program or instructor and upon a showing of good cause for reconsideration.

(B) A decision to reconsider a denial determination shall be a discretionary decision by the Education Committee, based on consideration of the additional information. Requests for reconsideration shall be made in writing by the applying program director or instructor.

~~[(g) The process for approval or denial. The process for approval or denial of applications for program approval are subject to the procedures outlined in §194.6(g) of this chapter (relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry).]~~

(g) ~~[(h)]~~ Renewal.

(1) Training Program.

(A) The training program director shall be responsible for renewing the approval of the training program [on or before the anniversary date of the initial application].

(B) The program director must apply for renewal of program approval every three years by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the approval.

(C) ~~[(2)]~~ Failure to submit the renewal form and renewal fee will result in the expiration of the training program's approval. In the case that the approval is expired, to obtain a new approval, the training program must reapply and meet all requirements for approval under this section.

(D) ~~[(3)]~~ A training program which does not renew the approval shall cease representing the program as an approved training program. The program director shall notify currently enrolled students that the training program is no longer approved under this section. The notification shall be in writing and must be issued within ten days of the expiration of the approval.

(2) Instructor.

(A) The instructor must apply for renewal of approval every three years by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the approval.

(B) Failure to submit the renewal form and renewal fee will result in the expiration of the instructor's approval. In the case that the approval is expired, to obtain a new approval, the instructor must reapply meet all requirements for approval under this section.

(C) The instructor who does not renew the approval shall cease representing that he or she is approved by the board to provide instruction in a non-certified technician training program in Texas.

(h) Grounds for Denial or Withdrawal of Approval.

(1) Failure of the applying or approved instructor or training program to comply with the provisions of this chapter or the Act

may be grounds for denial or withdrawal of the approval of the instructor or the training program.

(2) An approved instructor who holds a limited certificate may not teach, train, or provide clinical instruction in a portion of a training program that is different from the limited scope of certification that is listed on the permit. Providing instruction that exceeds the instructor's limited scope of practice is grounds for denial or withdrawal of approval.

(3) In the event that the board receives complaints against an approved instructor or program, such information shall be referred to the board's investigation department.

(4) Any material misrepresentation of fact by a program or instructor in any information required to be submitted to the board is grounds for denial or withdrawal of approval.

(5) The board may deny or withdraw its approval of a program or instructor after giving the program or instructor written notice setting forth its reasons for denial or withdrawal and after giving the program or instructor a reasonable opportunity to be heard by the Education Committee of the board.

(i) Change of Program Address. The program director shall report within 30 days after the event any change of address for the physical location of the program.

§194.23. Criminal Backgrounds.

This section sets out the guidelines and criteria related to the board's authority to deny certification, registration, or other approval, or to take disciplinary action based upon a person's criminal background.

(1) The board may suspend or revoke any certificate, registration, or other approval, disqualify a person from receiving any certificate, registration, or other approval, or deny to a person the opportunity to be examined for a certificate if the person is convicted of or subject to a deferred adjudication, enters a plea of nolo contendere or guilty to a felony or misdemeanor, and if the crime directly relates to the duties and responsibilities of a certificate, registration, or permit holder.

(2) In considering whether a pleading of nolo contendere or a criminal conviction directly relates to the occupation of a [certificate] holder of a certificate, registration, or other approval, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification, registration, or other approval; and

(C) the extent to which a certification, registration, or other approval might offer an opportunity to engage in further criminal activity of the same type as that which the person previously has been involved.

(3) The following felonies and misdemeanors apply to any certificate, registration, or other approval because these criminal offenses indicate an inability or a tendency to be unable to perform as a [certificate] holder of a certificate, registration, or other approval:

(A) the misdemeanor of knowingly or intentionally acting as a certificate holder without a certificate under the Act;

(B) any misdemeanor and/or felony offense defined as a crime of moral turpitude by statute or common law;

(C) a misdemeanor or felony offense involving:

(i) forgery;

(ii) tampering with a governmental record;

(iii) delivery, possession, manufacturing, or use of controlled substances and dangerous drugs;

(D) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; and

(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this section. [subsection];

(4) The misdemeanors and felonies listed in paragraph (3) of this section are not exclusive. The Board may consider other particular crimes in special cases in order to promote the intent of the Act and these sections.

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 November 16, 2018.

TRD-201804965

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Texas Medical Board

Earliest possible date of adoption: January 6, 2019

For further information, please call: (512) 305-7016



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE

INSPECTORS

22 TAC §§535.208, 535.212, 535.213, 535.218 - 535.220

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.208, Application for a License, §535.212, Education and Experience Requirements for a License, §535.213, Qualifying Real Estate Inspector Instructors and Courses, §535.218, Continuing Education Required for Renewal, §535.219, Schedule of Administrative Penalties, and §535.220, Professional Conduct and Ethics, in Chapter 535, General Provisions.

The proposed amendments to §535.208, Application for a License, updates an incorrect cite; amendments to §535.212, Education and Experience Requirements for a License, and §535.213, Qualifying Real Estate Inspector Instructors and Courses, reorganizes and clarifies the qualifying education, continuing education, and experience requirements for inspectors, including decreasing the ride-along class size from 10 to 2; and removes unused provisions. The proposed amendments to §535.218, Continuing Education Required for Renewal, allows inspectors to receive continuing education credit for courses

applicable to inspectors that are taken to satisfy continuing education requirements for an occupational license issued by another Texas governmental body. The proposed amendments to §535.219, Schedule of Administrative Penalties, adds a statutory violation that was inadvertently omitted; and in §535.220, Professional Conduct and Ethics, ties the section back to the parallel requirements of §531.18, which was recently updated to provide more flexibility for license holders. These proposed amendments are recommended by the Texas Real Estate Inspector Committee.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There will be some economic cost anticipated for persons who are required to comply with the proposed amendments, but it is hard to quantify since opinions vary in the industry. Lowering the number of students per class will likely raise the cost of the ride-along class some. This cost could be passed on to the students. The Texas Inspector Real Estate Committee opined that this cost would not be significant enough to outweigh the benefit to the student and ultimately the consumer when the student receives more individualized learning during the 40 hours of required ride-along classes. No Economic Impact Statement or Regulatory Flexibility Analysis was performed.

Ms. Lewis also has determined that for each year of the first five years the amendments as proposed are in effect the public benefits anticipated as a result of enforcing the sections will be clear and correct rules, additional options for inspectors to satisfy continuing education requirements, and improved hands-on training for inspector students. This will lead to greater competency and, therefore, greater consumer protection.

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

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- adversely affect the state's economy.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.208. *Application for a License.*

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

(h) Denial of application.

(1) An application for a license may be denied if the Commission determines that the applicant has failed to satisfy the Commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title. Notice of the denial and any hearing on the denial shall be as provided in Texas Occupations Code, §1101.364, and §535.34 [§533.34] of this title.

(2) Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the Commission in an application for a license for an apprentice or a real estate inspector.

§535.212. *Education and Experience Requirements for a License.*

(a) Educational Requirements for a Real Estate Inspector License. To become licensed as a real estate inspector [or professional inspector,] a person must satisfy [:]

[(1) the education and experience requirements outlined in §1102.108 and §1102.109 of Chapter 1102; or]

[(2) the education requirements outlined in §1102.108 and §1102.109 of Chapter 1102 and the substitute experience requirements established by the Commission pursuant to §1102.111 in subsection (f) or (g) of this section.]

[(b)] [A person may satisfy] the 90-hour education requirement for licensure [as a real estate inspector pursuant to subsection (a)(1) or (2) of this section] by completing the following coursework:

- (1) 10 hours in foundations;
- (2) 8 hours in framing;
- (3) 10 hours in building enclosure;
- (4) 10 hours in roof systems;
- (5) 8 hours in plumbing systems;
- (6) 10 hours in electrical systems;
- (7) 10 hours in heating, ventilation, and air conditioning systems;
- (8) 8 hours in appliances;
- (9) 4 hours in Texas Standards of Practice;
- (10) 4 hours in Texas Standard Report Form/Report Writing; and
- (11) 8 hours in Texas Legal/Ethics.

(b) [(e)]Educational Requirements for a Professional Inspector License. To become licensed as a professional inspector, a person must [A person may] satisfy the 130-hour education requirement for licensure [as a professional inspector pursuant to subsection (a)(1) or (2) of this section] by completing [the following coursework:]

[(1)] the courses required for licensure as a real estate inspector in subsection (a) [(b)] of this section; and

(1) [(2)] 8 additional hours in Texas Standard Report Form/Report Writing;

(2) [(3)] 8 additional hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title; and

(3) [(4)] 24 additional hours in any qualifying [eore] inspection subject(s).

(c) Experience Requirements.

(1) [(d)] To meet the experience requirements for licensure [For the purpose of measuring the number of inspections required to receive a license] or to sponsor apprentice inspectors or real estate inspectors, the Commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold, subject to the following restrictions:

(A) [(1)] An inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

[(2) Half credit will be given for an inspection limited to structural components only or to equipment/systems only.]

[(3) No more than 80% of the inspections for which experience credit is given may be limited to structural components only or to equipment/systems components only.]

[(4)] [A report addressing two or more improvements is considered a single inspection.]

(B) [(5)] The Commission may not give experience credit to the same applicant or professional inspector for more than three [complete or six partial] inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30 day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(C) [(e)] [For the purpose of satisfying any requirement that an applicant hold a license for a period of time in order to be eligible for a license as a real estate inspector or professional inspector, the Commission shall not give credit for periods in which a license was on inactive status.] An applicant for a real estate inspector license must have:

(i) been licensed as an apprentice inspector on active status for a total of at least three months within the 12 month period before [prior to] the filing of the application; and[-]

(ii) completed 25 inspections.

(D) An applicant for a professional inspector license must have:

(i) been licensed as a real estate inspector on active status for a total of at least 12 months within the 24 month period before [prior to] the filing of the application; and[-]

(ii) completed 175 inspections.

(d) Substitute Experience Requirements for a Real Estate Inspector License.

(1) [(f)] A person may satisfy the substitute experience requirements for licensure as a real estate inspector [pursuant to subsection (a)(2) of this section] as follows:

[(1)] [A person who does not have two years of experience as an architect, engineer, or engineer-in-training must:]

(A) complete a total of 32 additional hours of qualifying [e~~o~~r~~e~~] inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing;

(ii) 8 hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title;

(iii) 16 hours in any qualifying [e~~o~~r~~e~~] inspection subject(s); and

(B) complete [either]:

(i) [e~~o~~m~~p~~l~~e~~t~~e~~] 20 hours of field work through ride-along inspection course sessions as defined in §535.213(g) [§535.218] of this title; [; except there may be up to 10 students per session] and

(ii) 12 hours of an approved interactive experience training module.[;]

~~f(ii) complete 8 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 30 hours of an approved interactive experience training module; or]~~

(2) Exceptions. The Commission may award substitute experience credit to an applicant who has not met the additional qualifying course requirements under this subsection if:

(A) the applicant:

(i) [(iii)] has [have] three years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property; and

(ii) provides to the Commission [provide] two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience; or[-];

(B) [(2)] The applicant:

(i) [A ~~person who~~] has at least two years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training and has completed [must (A) e~~o~~m~~p~~l~~e~~t~~e~~ a total of] 16 additional hours of qualifying [e~~o~~r~~e~~] inspection coursework, which must include the following:

(I) [(i)] 8 hours in Texas Standard Report Form/Report Writing; and

(II) [(ii)] 8 hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title; and

(ii) [(B)] submits [submit] a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(e) Substitute Experience Requirements for a Professional Inspector License.

(1) [(g)] A person may satisfy the substitute experience requirements for licensure as a professional inspector [pursuant to subsection (a)(2) of this section] as follows:

[(1) [A person who does not have three years of experience as an architect, engineer, or engineer-in-training must:]

(A) complete a total of 200 additional hours of qualifying [e~~o~~r~~e~~] inspection coursework, which must include the following:

(i) 30 hours in foundations;

(ii) 30 hours in framing;

(iii) 24 hours in building enclosure;

(iv) 24 hours in roof systems;

(v) 16 hours in plumbing systems;

(vi) 24 hours in electrical systems;

(vii) 24 hours in heating, ventilation, and air conditioning systems;

(viii) 6 hours in appliances;

(ix) 8 hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title;

(x) 8 hours in Standard Report Form/Report writing;

and

(xi) 6 hours in any core inspection subject(s); and

(B) complete [either]:

(i) [e~~o~~m~~p~~l~~e~~t~~e~~] 40 hours of field work through ride-along inspection course sessions as defined in §535.213(g) [§535.218] of this title; [; except there may be up to 10 students per session] and

(ii) 24 hours of an approved interactive experience training module.[;]

~~f(ii) complete 16 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 60 hours of an approved interactive experience training module;]~~

(2) Exceptions. The Commission may award substitute experience credit to an applicant who has not met the additional qualifying course requirements under this subsection if:

(A) the applicant:

(i) [(iii)] has [have] five years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property; and

(ii) provides to the Commission [provide] two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience; or[-];

(B) [(2)] The applicant [A ~~person who~~] has:

(i) at least three years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training, who [must:] [(A)] has completed [e~~o~~m~~p~~l~~e~~t~~e~~] a total of 16 additional hours of qualifying [e~~o~~r~~e~~] inspection coursework, which must include the following:

(I) [(i)] 8 hours in Texas Standard Report Form/Report Writing; and

(II) [(ii)] 8 hours in non-elective coursework in legal, ethics, SOPs, and report writing as defined in §535.218 of this title; and

(ii) [(B)] submits [submit] a license history from the regulatory agency that issued the license or registration documenting

the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(f) ~~[(h)]~~ For purposes of this section:

(1) "qualifying ~~[eore]~~ inspection coursework" means course work on the subject matters listed in §535.213(e) of this title; and

(2) "interactive experience training module" means education that provides regular and substantive interaction between the students and the instructor, either synchronously or asynchronously, and is delivered:

(A) in-person to students in the classroom; or

(B) through the use of one or more of the following technologies:

(i) the internet;

(ii) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite or wireless communications devices;

(iii) audio conferencing; or

(iv) video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in subparagraphs (B)(i) through (B)(iii) of this paragraph.

§535.213. *Qualifying Real Estate Inspector Instructors and Courses.*

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

(c) A classroom course may include up to 50% of total course time for appropriate field trips relevant to the course topic. Field trips may not be included as part of distance education ~~[eorespondenee or alternative]~~ delivery courses.

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

(g) Ride-along inspection course for qualifying education.

(1) A ride-along inspection course must:

(A) at a minimum consist of one full residential property inspection per 8 hours of course credit;

(B) review applicable standards of practice and departure provisions contained in §§535.227 - 535.233 of this title; and

(C) consist of no more than two students per instructor.

(2) The instructor of a ride-along inspection course may:

(A) review report writing;

(B) deliver a notice regarding the ride-along session on a form approved by the Commission to the prospective buyer or seller of the home being inspected.

§535.218. *Continuing Education Required for Renewal.*

(a) Continuing education required for renewal.

(1) Before ~~[Prior to]~~ renewal of an ~~[a real estate inspector or professional]~~ inspector license, a license holder must take the 32 hours of continuing education which shall include the following:

(A) 24 hours of qualifying course subjects as described in §535.213(e)(1) - (8), (11) and (12) of this title, with a maximum of 16 hours on any one single subject; and

(B) eight hours of non-elective coursework in legal, ethics, SOPs, and report writing consisting of the following coursework:

(i) 4 hours of Standards of Practice Review; and

(ii) 4 hours of Legal and Ethics.

(2) An ~~[A real estate inspector or professional]~~ inspector who files an application for reinstatement of an expired license within two years of the expiration date of the previous license, must provide evidence satisfactory to the Commission that the applicant has completed any continuing education that would have been otherwise required for timely renewal of the previous license had that license not expired.

(b) Receiving continuing education credit for ride-along ~~[Ride-along]~~ inspection course.

~~[(+)]~~ Up to eight hours of continuing education credit per two year license period may ~~[ean]~~ be given to a license holder for completion of a ride-along inspection course as defined in §535.213(g) of this title.

~~[(2) At a minimum, a ride-along inspection course must:]~~

~~[(A) consist of one full residential property inspection; and]~~

~~[(B) review applicable standards of practice and departure provisions contained in §§535.227 - 535.233 of this title.]~~

~~[(3) In order to qualify for real estate inspector continuing education credit, a ride-along inspection course shall consist of no more than two students per session.]~~

~~[(4) The instructor of a ride-along inspection course may:]~~

~~[(A) review report writing;]~~

~~[(B) deliver a notice regarding the ride-along session on a form approved by the Commission to the prospective buyer or seller of the home being inspected.]~~

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

(e) Continuing education credit for course taken outside of Texas. An inspector may receive continuing education elective credit for a course taken to satisfy the continuing education requirements of a country, territory, or state other than Texas if:

(1) the ~~[real estate inspector or professional]~~ inspector licensed in Texas held an active inspector license in a country, territory, or state other than Texas at the time the course was taken;

(2) the course was approved for continuing education credit for an inspector license by a country, territory, or state other than Texas at the time the course was taken;

(3) the successful completion of the course has been evidenced by a course completion certificate, a letter from the provider or such other proof satisfactory to the Commission;

(4) the subject matter of the course was predominately devoted to a subject acceptable for continuing education credit for an ~~[a real estate inspector or professional]~~ inspector licensed in Texas; and

(5) the ~~[real estate inspector or professional]~~ inspector licensed in Texas has filed a Continuing Education (CE) Credit Request for an Out of State Course, with the Commission.

(f) (No change.)

(g) Continuing education credit for attendance at a meeting of the Texas Real Estate Inspector Committee. An ~~[A real estate inspector or professional]~~ inspector licensed in Texas may receive up to four hours of continuing education elective credit per license period for at-

tendance in person at the February meeting of the Texas Real Estate Inspector Committee.

(h) Continuing education credit for courses taken by persons who hold another occupational license issued by a governmental body in Texas. An inspector licensed in Texas may receive continuing education credit for a course taken to satisfy the continuing education requirements for another occupational license if:

(1) the inspector files the applicable form with the Commission;

(2) the inspector holds one of the following occupational licenses, including but not limited to:

(A) plumber;

(B) electrician;

(C) architect;

(D) professional engineer;

(E) air conditioner and refrigeration technician; or

(F) structural pest control applicator or technician;

(3) at the time the course was taken:

(A) the inspector held an active occupational license issued by a governmental body in Texas; and

(B) the course was approved for continuing education credit for the other occupational license;

(4) the inspector demonstrates successful completion of the course by submitting:

(A) a course completion certificate;

(B) a letter from the provider; or

(C) other proof satisfactory to the Commission; and

(5) the primary subject matter of the course was a subject acceptable for continuing education credit for an inspector licensed in Texas.

§535.219. *Schedule of Administrative Penalties.*

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

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of Chapter 1101, Chapter 1102 and this subchapter:

(1) §1101.652(a)(7);

(2) §1102.118;

(3) §1102.305;

(4) [~~3~~] §1102.364;

(5) [~~4~~] 22 TAC §535.216(d);

(6) [~~5~~] 22 TAC §535.217;

(7) [~~6~~] 22 TAC §535.220(a) - (d);

(8) [~~7~~] 22 TAC §535.221; and

(9) [~~8~~] 22 TAC §535.223.

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

§535.220. *Professional Conduct and Ethics.*

(a) - (f) (No change.)

(g) Each active licensed [real estate] inspector [licensed by the Commission] shall provide the consumer notice adopted under §531.18 of this title in the manner described by that section.[:]

[(1) displaying it in a readily noticeable location in each place of business the inspector maintains; and]

[(2) providing a link to it labeled "Texas Real Estate Commission Consumer Protection Notice", in at least a 10 point font, in a readily noticeable place on the homepage of the business website of the inspector].

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 November 19, 2018.

TRD-201804989

Kerri Lewis

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: January 6, 2019

For further information, please call: (512) 936-3092



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 265. GENERAL SANITATION SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

25 TAC §§265.11, 265.12, 265.15, 265.23, 265.24

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), proposes amendments to §265.11, concerning Definitions; §265.12, concerning Directors, Supervisors, and Staff; §265.15, concerning Medical and Nursing Care; §265.23, concerning Application and Denial of a New License; Non-transferable; and §265.24, concerning Application and Denial of a Renewal License.

BACKGROUND AND PURPOSE

Texas Health and Safety Code, §141.006 establishes DSHS as the principal authority on matters relating to health and safety conditions at youth camps. Texas Health and Safety Code, §141.008 authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules to implement the Youth Camp Safety and Health Act.

The purpose of the amendment to §265.11 is to create a more concise description of the general characteristics of a youth camp to ensure proper licensing of those operations that are traditional youth camps and eliminate improper licensing of those operations that are child care programs. The amendment also eliminates the 60% out-of-doors requirement to reduce campers' exposure to heat-related illnesses.

The purpose of the amendment to §265.15 is to require licensees to notify the youth camp regulatory authority, DSHS-Policy Stan-

dards Quality Assurance (PSQA) section, of any incidents or suspected incidents of abuse or neglect of a minor at a youth camp. The proposed revisions further clarify that notification of the PSQA section is separate and distinct from the abuse and neglect reporting requirements established in Chapter 261 of the Family Code.

The amendments replace the term "hazardous activity" with "youth camp activity;" update organizational units and divisions and agency titles; eliminate unnecessary language; and correct grammatical and syntax changes for clarity.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §265.11 creates a new definition for a "challenge course" to clarify the activities and equipment for the industry and regulators. The "hazardous activity" definition is renamed to "youth camp activity." The definition for "playground" updates the "Handbook for Public Playground Safety" website. The "public water system" definition revises the public drinking water rule references in 30 Texas Administrative Code. The definition of "youth camp, general characteristics of" is amended by removing the 60% out-of-doors requirement that was a qualifying characteristic of a youth camp, and inserting the minimum requirement of two youth camp activities to better define and license those operations that are traditional youth camps and eliminate improper licensing of child care programs. This change will also help protect campers from exposure to heat-related illnesses.

The proposed amendment to §265.12 replaces the references to "hazardous activity" with "youth camp activity."

The proposed amendments to §265.15(d) add the requirement for youth camp operators or staff to notify the youth camp regulatory authority, DSHS-PSQA section, of any incidents or suspected incidents of abuse or neglect of a minor at a youth camp. The amendments also clarify that this requirement is separate and distinct from Texas Family Code, Chapter 261, which describes the authorities to which a person must report child abuse or neglect. Also, the Texas Juvenile Justice Department names are updated.

The amendment to §265.23 provides grammatical changes for clarity.

The amendment to §265.24 updates the organizational division and unit.

FISCAL NOTE

Donna Shepard, Chief Financial Officer, has determined that for the first five years that the sections will be in effect, there will be fiscal implications to state government as a result of enforcing and administering the sections as proposed.

DSHS will lose revenue from licensing fees for those camps that no longer meet the criteria, probably less than \$8,500.00 in total for the first five years. A loss of revenue is anticipated in licensing fees collected. Due to the definition change, some current operations will no longer qualify for a license. The first year should see the largest decrease in numbers of firms not qualifying for renewal of license or initial application of a license, approximately (\$6,000) 40 licenses at \$150. It is anticipated that in future years those numbers should steadily decrease: second year (\$1,500) 10 licenses at \$150, third year (\$600) 4 licenses at \$150, fourth and fifth years (\$150) 1 license per year at \$150 each year. There will be no fiscal implications to local govern-

ment as a result of enforcing or administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the proposed 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 result in a decrease in fees paid to the agency;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand existing rules; and
- (7) the proposed rules will decrease the number of individuals subject to the rules.

DSHS has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Shepard, Chief Financial Officer, has also determined that there will be no adverse impact on small businesses, micro-businesses or rural communities required to comply with the sections as proposed. The proposed rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections 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 are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and reduce the burden or responsibilities imposed on regulated persons by the rules.

PUBLIC BENEFIT

Kirk Cole, Interim Associate Commissioner, has determined that for each year of the first five years that the proposed sections will be in effect, the public will benefit from adoption of the sections. The public benefit anticipated from enforcing or administering the sections is to better ensure the health and safety of children attending youth camps.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by Texas 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the DSHS Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date and time will be posted on the DSHS Youth Camp website at www.dshs.state.tx.us/youth-camp/default.shtm. Please contact Jeff Mantia by phone at (512) 231-5753 or by email at Jeffrey.Mantia@dshs.texas.gov if you have questions.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Jeff Mantia, Consumer Protection Division, Texas Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347; by phone (512) 231-5753; or by email to CPDRuleComments@dshs.texas.gov. Please indicate "Comments on Chapter 265 Youth Camp Rules" in the subject line.

To be considered, comments must be submitted no later than 30 days following publication of the proposal in the *Texas Register*. If the last day to submit comments falls on a weekend or a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be considered.

For further information, please call: (512) 231-5753.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code, §141.008, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules to implement the Youth Camp Safety and Health Act; and by Texas Government Code §531.0055, and Health and Safety Code §1001.075, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The amendments implement Texas Health and Safety Code, Chapters 141 and 1001; and Texas Government Code, Chapter 531.

§265.11. Definitions.

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

- (1) Act--Texas Youth Camp Safety and Health Act, Health and Safety Code, Chapter 141.
- (2) Adult--A person at least 18 years of age or older.
- (3) Camper--A minor child, under 18 years of age, who is attending a youth camp on either a day or boarding basis.
- (4) Challenge course--Activity designed for educational purposes or team building, which may offer a variety of challenges, in-

cluding zip lines, high and low rope courses, rappelling, and climbing walls.

(5) [(4)] Commissioner--The Commissioner of the Department of State Health Services.

(6) [(5)] Day camp--A camp that operates during the day or any portion of the day between 7:00 a.m. and 10:00 p.m. for four or more consecutive days and that offers no more than two overnight stays during each camp session. To be eligible to be licensed as a youth camp, the camp's schedule shall be structured so that each camper attends for more than four hours per day for four consecutive days. The term does not include a facility that is required to be licensed with the Department of Family and Protective Services [(formerly the Department of Protective and Regulatory Services)].

(7) [(6)] Department--Department of State Health Services[, P.O. Box 149347, Austin, Texas 78714-9347].

(8) [(7)] Executive Commissioner--Executive Commissioner of the Health and Human Services Commission.

(9) [(8)] Firearm--Any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or a burning substance, or any device readily convertible to that use.

[(9) Hazardous activity--A camp activity such as water-front activities, archery, horseback riding, challenge courses, or riflery that requires special technical skills, equipment, or safety regulations.]

(10) Municipal water supply--A public water supply owned or operated by or for a city or a corporation having the right of administering local government.

(11) Pellet gun--Any device designed, made, or adapted to expel a projectile through a barrel by using compressed air or carbon dioxide. This definition includes[; but is not limited to,] air guns, air rifles, BB guns, and paintball guns.

(12) Permanent structure--Man-made buildings such as dining halls, dormitories, cabins, or other buildings that are constructed to remain stationary.

(13) Person--An individual, partnership, corporation, association, or organization. In [these] rules for this subchapter, a person does not include a government or governmental subdivision.

(14) Playground--A designated area designed for campers to play freely on equipment as defined in the U.S. Consumer Product Safety Commission Publication Number 325, "Handbook for Public Playground Safety," December 2015 (<https://www.cpsc.gov/Page-Files/122149/325.pdf>) [April 2008 (<http://www.epsc.gov/CP-SCPub/PUBS/325.pdf>)] as amended.

(15) Primitive camp--A youth camp that does not provide either permanent structures or utilities for camper use.

(16) Public water system--A public water system, as defined in 30 Texas Administrative Code (TAC) §290.38(71) is [§290.38(66)--The rules effective December 10, 2009 define a public water system as] a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water (30 TAC §290.38(23)). [§290.38(22)]: Such a system shall have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two

of more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.]

(17) Resident camp--A camp that for a period of four or more consecutive days continuously provides residential services to each camper, including overnight accommodations for at least three consecutive nights.

(18) Supervised--A person is supervised if the person is within sight, except for infrequent momentary periods such as restroom breaks, and within reasonable hearing distance of a camper's outcry, of an adult with an obligation to report inappropriate or dangerous activities or behavior who has been made aware that the obligation is in effect at that time and who has willingly accepted the obligation. This definition is applicable only to rules relating to unsupervised contact with campers.

(19) Supervisor/counselor--Camp personnel or youth group leader, at least 18 years of age or older, who is responsible for the immediate supervision of campers.

(20) Swim test--A formalized test, specific to the body of water utilized, to determine each child's swimming ability. A swim test includes a skill evaluation, or some equivalent method of determining swimming ability, such as:

(A) Non-swimmer: Get into the shallow water, sit down, stand up, and exit the water.

(B) Intermediate swimmer: Jump feet first into water at least twelve inches deeper than the height of the child. Level off, swim 25 feet, turn around and swim back. Exit the water.

(C) Swimmer: Jump feet-first into water at least twelve inches deeper than the height of the child and swim 75 yards in a strong stroke on your stomach or side (breaststroke, sidestroke, crawl, trudgen, or any combination). Then swim 25 yards on your back (elementary back stroke), then float and rest on your back for one minute. Exit the water.

(21) [(22)] TCEQ--Texas Commission on Environmental Quality[, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-1000].

(22) [(21)] Travel camp--A day or resident camp, lasting for four or more consecutive days, that begins and ends at a fixed location, but may move from location to location on a daily basis.

(23) Waterfront--A natural, or artificial body of water that includes[, but is not limited to,] a lake, ocean, bay, pond, river, swimming pool, or spa, which is the site of any water activity.

(24) Waterfront activity--A recreational or instructional activity, occurring in, on, or near a waterfront. Waterfront activity includes[, but is not limited to,] swimming, boating, water skiing, scuba diving, rafting, tubing, synchronized swimming or sailing.

(25) Youth camp--A facility or property, other than a facility required to be licensed by the Department of Family and Protective Services that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) is used for recreational, athletic, religious, or educational activities;

(C) accommodates at least five minors who attend or temporarily reside at the camp for all or part of at least four consecutive days; and

(D) is not a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Education Code, §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

(26) Youth camp activity--A camp activity such as waterfront activities, archery, horseback riding, challenge courses, or riflery that requires special technical skills, equipment, or safety regulations.

(27) [(26)] Youth camp, general characteristics of--A youth camp:

(A) provides supervision, instruction, and recreation;

(B) accommodates at least five minors during each camp session;

(C) operates as a youth camp for no more than 120 days each calendar year;

(D) hosts children who are apart from parents or guardians;

(E) operates as a youth camp for a period of four or more consecutive days;

(F) operates as a youth camp for more than four consecutive hours per day;

(G) operates as a youth camp only during school vacation periods; and

(H) offers at least two youth camp activities in an outdoor setting such as waterfront activities, archery, horseback riding, challenge courses, or riflery that requires special technical skills, equipment, or safety regulations.

[(H) offers a variety of activities in an outdoor setting; and]

[(H) schedules activities so that campers spend a minimum of 60% of their time out-of-doors between the hours of 7:00 a.m. and 10:00 p.m.]

(28) [(27)] Youth camp operator--Any person who owns, operates, controls, or supervises a youth camp, whether or not for profit.

§265.12. Directors, Supervisors, and Staff.

(a) On-site director required. Each youth camp shall be under the on-site direction of a qualified adult with at least two years of experience working with children. The director shall be knowledgeable in camp administrative practices and shall have at least one year of leadership experience with an organized youth camp, school or other youth-serving organization, such as the Boy Scouts of America or Young Men's Christian Association (YMCA).

(b) Adult supervisors. Each youth camp shall have at least one adult supervisor who is responsible for the supervision of no more than ten children in the camp. For any youth camp [hazardous] activity the supervisor(s) shall be in the immediate vicinity (within sight and/or hearing) of the campers. An "all camp" sedentary activity, not requiring physical activity, may require less supervision, and each camp shall establish its own guidelines, but not less than one adult supervisor to

every 25 campers. The camp director shall not be included in the supervisor to camper ratio in camps serving over 50 campers at one time.

(c) Supervision of youth camp [~~hazardous~~] activity. Youth camp [~~Hazardous camp~~] activities shall be conducted by and under the direct supervision of a qualified adult capable of implementing safety standards established by the department or the camp. The specialist shall also have documented training or at least two years documented experience in conducting the activity.

(d) Written personnel policies and practices. A camp shall have written personnel policies and practices for both campers and staff. Supervisors shall be informed of these policies and practices prior to assuming responsibility for campers.

(e) Staff member character and integrity records. The camp management shall ascertain and have on record information, such as a letter of reference, attesting to the character and integrity of each staff member, and information, such as training certificates, attesting to the ability of each staff member to perform the tasks required in his or her position.

(f) Criminal conviction and sex offender background check requirements. The camp management shall have on file a record of any criminal conviction and a sex offender registration check for all adult staff members and all adult volunteers working at the camp before the staff member or volunteer has unsupervised contact with children at the camp. If the records are located off-site, a letter from the national or regional headquarters of the camp organization stating the names of individuals at the camp site for whom background checks have been conducted, shall be available at the camp site. All records of criminal convictions and written evaluations for a camp or camping organization shall be made available to department personnel within two business days upon request. Youth camps are responsible for ensuring that criminal and sex offender background checks have been conducted for international staff obtained through the J-1 visa process, and that documentation of these checks are located with other staff background checks. Records of criminal convictions and sex offender status shall be obtained by:

(1) performing an annual criminal background check using a criminal history database for each adult staff member's and each adult volunteer's permanent residence. If the staff member or adult volunteer has a temporary or an educational residence, an annual criminal background check shall include searching under the permanent, temporary and educational address, as applicable. The criminal history database used for the criminal background check is to be based on the individual's residences, and may include state, national or international databases. Documentation of the search results, whether or not the results are positive, shall be maintained with the sex offender background documentation; and

(2) performing an annual background check using a sex offender registration database for each adult staff member's and each adult volunteer's permanent residence and educational residence if applicable, such as the TXDPS - Sex Offender Registry, which may be accessed at Texas Department of Public Safety - Crime Records Service. Documentation of the search results, whether or not the results are positive, shall be maintained with the criminal background documentation.

(g) Persons whose presence at a youth camp shall be precluded. Youth camps shall not employ paid or unpaid staff members or volunteers at a youth camp, or permit any person to have unsupervised contact with campers other than their own children if the person has the following types of criminal convictions or deferred adjudications: a misdemeanor or felony under Texas Penal Code, Title 5 (Offenses Against the Person), Title 6 (Offenses Against the Family), Chapter

29 (Robbery) of Title 7, Chapter 43 (Public Indecency) or §42.072 (Stalking) of Title 9, §15.031 (Criminal Solicitation of a Minor) of Title 4, §38.17 (Failure to Stop or Report Aggravated Sexual Assault of Child) of Title 8, or any like offense under the law of another state or under federal law.

(h) Persons whose presence at a youth camp may be precluded.

(1) Youth camps may preclude a person from being a paid or unpaid staff member or volunteer at a youth camp; or may preclude a person from having unsupervised contact with campers other than the person's own children, if the person has the following types of criminal convictions or deferred adjudications:

(A) a misdemeanor or felony committed within the past ten years under §46.13 (Making a Firearm Accessible to a Child) or Chapter 49 (Intoxication and Alcoholic Beverage Offenses) of Title 10 of the Texas Penal Code, or any like offense under the law of another state or under federal law; or

(B) any other felony under the Texas Penal Code or any like offense under the law of another state or under federal law that the person committed within the past ten years.

(2) Camp management shall have on file a written evaluation by two or more camp executive staff for any staff member or volunteer whose presence at the youth camp may be precluded under this subsection showing that management has determined the person is suitable for a position at the youth camp despite a criminal conviction or deferred adjudication.

(i) Sexual abuse and child molestation awareness training and examination program.

(1) Effective June 1, 2006, a youth camp licensee may not employ or accept the volunteer service of an individual for a position involving contact with campers at a youth camp unless:

(A) the individual submits to the licensee or the youth camp has on file documentation that verifies the individual within the preceding two years has successfully completed the training and examination program required by this subsection; or

(B) the individual successfully completes the youth camp's training and examination program approved by the department during the individual's first workweek, and prior to any contact with campers unless supervised during the first workweek by an adult who has successfully completed the program.

(2) For purposes of this subsection, the term "contact with campers" does not include visitors such as a guest speaker, an entertainer, or a parent who visits for a limited purpose or a limited time if the visitor has no direct and unsupervised contact with campers. A visitor may have direct and unsupervised contact with a camper to whom the visitor is related. A camp may require training and an examination for visitors if it chooses.

(3) A youth camp licensee shall retain in the person's personnel record a copy of the documentation required or issued under paragraph (1)(A) of this subsection for each employee or volunteer until the second anniversary of the examination date.

(4) Prior to their use, the department may approve training and examination programs offered by trainers under contract with youth camps, by online training organizations, or programs offered in another format, such as a videotape, authorized by the department.

(5) A training and examination program on sexual abuse and child molestation approved by the department shall at a minimum include training and an examination on:

(A) the definitions and effects of sexual abuse and child molestation;

(B) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk;

(C) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse;

(D) the recommended rules and procedures for youth camps to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation;

(E) the need to minimize unsupervised encounters between adults and minors; and

(F) the potential for consensual and nonconsensual sexual activity between campers, steps to prevent sexual activity between campers, and how to respond if sexual activity between campers occurs.

(6) The training program shall last for a minimum of one hour and discuss each of the topics described in paragraph (5) of this subsection.

(7) The examination shall consist of a minimum of 25 questions which shall cover each of the topics described in paragraph (5) of this subsection.

(8) To successfully complete the training program, each employee or volunteer shall achieve a score of 70% or more correct on an individual examination. If the examination is taken on-line, the employee or volunteer shall retain a certificate of completion indicating they successfully completed the course.

(9) The department may assess a fee of \$125 to each applicant to cover the costs of the department's initial review and each follow-up review of a training and examination program.

(10) Applications and fees shall be mailed to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347. Applications may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600 or may be downloaded from <http://www.dshs.state.tx.us/youthcamp/default.shtm>.

(11) The department, at least every five years from the date of initial approval, shall review each training and examination program approved by the department to ensure the program continues to meet the criteria and guidelines established under this subsection.

(j) Supervised contact with campers.

(1) A person supervising another person who is prohibited from having unsupervised contact with campers:

(A) may include one or more paid or unpaid members of camp staff or management; law enforcement officers; security personnel; lifeguards or other responsible staff at any off-site facility; or parents or other adults;

(B) must be charged with responsibility to monitor, oversee, or supervise the person on behalf of the licensee or camp management; and

(C) must have the ability and means to summon competent assistance at all times while remaining within sight and hearing distance of the supervised person.

(2) A person who is prohibited from having unsupervised contact with campers must be supervised at all times during which that person has or might have any contact with one or more campers,

whether intentional or unintentional, and whether part of scheduled camp activities or not. The potential for contact with campers by a person is presumed at all times during which one or more campers are present at the facility at which the person is present unless there is an impassable barrier between them.

(k) Records retention. All applications, background check reports, training documentation, and other required personnel documentation required by this subchapter shall be maintained in hard copy or electronic format for a minimum of two years following a person's last day of service.

§265.15. Medical and Nursing Care.

(a) Record of an on-call physician required. Documentation shall be kept on file of a physician licensed to practice in Texas who is available to be on call at all times to advise health service personnel on all first aid and nursing services provided by the camp.

(b) Emergency transportation. Transportation shall be available at all times to transport any sick or injured camper in an emergency.

(c) Medical staffing requirements. A physician, registered nurse, licensed vocational nurse, or a person with an American Red Cross Emergency Response certificate, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer. For camps having documented evidence, such as a letter from the local emergency medical services (EMS), that the camp is located within a 20 minute community EMS response time, a person certified in American Red Cross Community First Aid and Safety, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer.

(d) Requirement to report incidents of abuse or neglect of a minor.

(1) Requirement to report incidents of abuse or neglect of a minor at a youth camp.

(A) If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Family Code, Chapter 261, and the abuse or neglect occurred at the youth camp, then that person shall immediately make a report, in accordance with Family Code, §261.101(a) to one of the appropriate agencies designated by Family Code, §261.103. Accordingly, a report shall be made to:

(i) any local or state law enforcement agency;

(ii) the Department of Family and Protective Services Abuse Hotline, which may be contacted at (800) 252-5400 or through the secure web site <http://www.txabusehotline.org/>; or

(iii) the department.

(B) If a person making a report in accordance with subparagraph (A) of this paragraph has not already notified the department as part of such a report, the person shall also immediately notify the department's Policy, Standards and Quality Assurance Unit by phone at (512) 834-6788, by fax at (512) 834-6707, or by email at PH-SCPS@dshs.texas.gov that a minor has been or may have been abused or neglected at a youth camp.

~~{(1) Requirement to report incidents of abuse or neglect of a minor at a youth camp. If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Family Code, Chapter 261, and the abuse or neglect occurred at the youth camp, then that person shall immediately make~~

a report, in accordance with Family Code, §261.101(a) to the Health and Human Services Commission Office of Inspector General, as required by Family Code, §261.103. To make an online report go to https://oig.hhsc.state.tx.us/Fraud_Report_Home.aspx. A report intake form, entitled HHSC Office of Internal Affairs: Texas Youth Camp Waste, Abuse and Fraud Referral Form may be faxed to the Office of Inspector General, Internal Affairs, 1-800-436-6184. A report shall be made to the Health and Human Services Commission Office of Inspector General and may be made to a local or state law enforcement agency or other agency listed in Family Code, §261.103.]

(2) Requirement to report incidents of abuse or neglect of a minor other than at a youth camp. If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Family Code, Chapter 261, and the abuse or neglect did not occur at the youth camp, then that person shall immediately make a report, in accordance with Family Code, §261.103.

(A) Except as provided by subparagraphs (B), (C) and (D) of this paragraph, a report shall be made to:

- (i) any local or state law enforcement agency;
- (ii) the Department of Family and Protective Services Abuse Hotline, which may be contacted at (800) 252-5400 or through the secure web site <http://www.txabusehotline.org/>;
- (iii) the agency designated by the court to be responsible for the protection of children.

(B) A report may be made to the Texas Juvenile Justice Department [~~Texas Youth Commission~~] instead of the entities listed under subparagraph (A) of this paragraph if the report is based on information provided by a child while under the supervision of the Texas Juvenile Justice Department [~~commission~~] concerning the child's alleged abuse of another child.

(C) Notwithstanding subparagraph (A) of this paragraph, a report, other than a report under subparagraph (D) of this paragraph, shall be made to the Department of Family and Protective Services if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child.

(D) A report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility shall be made to the Texas Juvenile Justice Department [~~Probation Commission~~] and a local law enforcement agency for investigation.

(e) Requirement to report camper death or communicable diseases. Camper death or confirmed cases of waterborne or foodborne diseases, such as cholera, dysentery, typhoid, salmonellosis, shigellosis, or infectious hepatitis, shall be reported to the department's Policy, Standards, and Quality Assurance Unit, within 24 hours of occurrence (or confirmation in the case of disease) by fax at (512) 834-6707, or by email at PHSCPS@dshs.texas.gov [the address found at www.dshs.state.tx.us/youthcamp/default.shtm].

(f) Designation of a first aid area. A first aid area, used exclusively to handle health and emergency cases, shall be designated and suitably equipped. Supplies should be in single use packaging. A first aid kit containing at the minimum the items listed in this subsection shall be available in the first aid area.

- (1) Sterile adhesive bandages in assorted sizes.
- (2) Sterile gauze pads in assorted sizes.
- (3) Hypoallergenic adhesive tape.
- (4) Triangular bandages.

- (5) Sterile roller bandages in assorted sizes.
- (6) Scissors.
- (7) Tweezers.
- (8) Moistened towelettes.
- (9) Antiseptic.
- (10) Thermometer.
- (11) Splints.
- (12) Petroleum jelly or other lubricant.
- (13) Cleansing agent/soap.
- (14) Exam quality gloves.
- (15) Eye wash solution.

(g) Isolation of a child with a communicable disease. A child ill with a confirmed or suspected case of a communicable disease shall be isolated to provide safety to other children and quiet to the patient. Any child that is isolated shall be supervised as determined by the Camp Health Officer. A child with a staphylococcal skin infection is not required to be isolated, if the infection is kept completely covered by a bandage.

(h) Bound medical log required. A bound medical log, or other unalterable record keeping system, listing date, name of the patient, ailment, name of the Camp Health Officer, and the treatment prescribed shall be kept in the first aid area for the duration of the camp year for which the license is issued.

(i) Camper health records shall be kept on file. The first aid area shall keep a health record on each child with the child's name, allergies, immunizations, parent's name, address, and telephone number, and parent or guardian authorization for emergency medical care.

(j) Availability of an emergency telephone. The camp shall have a telephone readily available, preferably in the first aid area, for emergency use.

(k) Emergency plans required. A written plan of procedures to be implemented in case of a disaster, serious accident, epidemic, or fatality shall be formulated and posted in the camp's administrative on-site office or location and in each permanent and semi-permanent occupied building. The plan shall include procedures for emergency shelter and for evacuation of each occupied building and the facility. Campers shall be instructed as to their actions in the event of fire, disaster, or the need to evacuate. These procedures shall be reviewed by the staff with specific assignments made to each staff member and counselor. All camp staff and volunteers shall be made aware of this plan during the staff-training program or volunteer briefing. Documentation of this training shall be kept at the camp's administrative on-site office or location.

(l) Storing and dispensing prescription medication to campers. If a child is taking a prescription medication when he or she reports to camp, the medication shall be in the original container with the prescription label, and the medical staff shall place that medication, sharps, and related paraphernalia or devices in a lockable cabinet or other secure location that is not accessible to campers. The medication shall be administered by the Camp Health Officer or camp counselor, if authorized in writing by the Camp Health Officer. At no time shall the child be allowed to self-administer the medication without adult supervision. Medications needed for immediate use for life-threatening conditions (e.g., bee-sting medication, inhaler) and limited medications approved for use in first-aid kits may be carried by a camper or staff person. The camp shall have on file a written statement of medical necessity from

the prescribing doctor or the written approval of the Camp Health Officer for any camper to carry medication and related paraphernalia or devices.

(m) Camp trip first aid kits. First aid kits containing at the minimum the items listed in subsection (f) of this section shall be taken on all out-of-camp trips.

§265.23. *Application and Denial of a New License; Non-transferable.*

(a) License required. A person shall possess a valid youth camp license prior to operating a youth camp.

(1) Submitting an application. An application is made by submitting:

(A) a completed youth camp application;

(B) an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations;

(C) any other requested documents and information; and

(D) paying the license fee as described in §265.28 of this title (relating to Fees).

(2) Obtaining an application. A blank application may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600 or may be downloaded from the website at www.dshs.state.tx.us/youthcamp/default.shtm. Applications may be submitted to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347.

(3) Qualifying for a youth camp license. The department shall issue a license if the facility:

(A) meets the definition of a "Youth camp" as described in §265.11(25) of this title (relating to Definitions);

(B) meets the definition of "Youth camp, general characteristics of" in §265.11(27) [~~§265.11(26)~~] of this title; and

(C) is in compliance, or has demonstrated a plan for compliance, with all provisions of the Act and the rules prior to operation as determined by:

(i) submitting a complete application as described in paragraph (1) of this subsection; and

(ii) passing a pre-licensing inspection conducted by the department, using the standard youth camp inspection form that may be found at <http://www.dshs.state.tx.us/youthcamp/forms.shtm>.

(b) Processing applications.

(1) Applications for a new license issued under this chapter shall be submitted to the Environmental and Sanitation Licensing Group at least 90 calendar days prior to camp operation.

(2) The department shall issue the new license or a written notice that the application is complete or that the application is deficient within the following periods of time. The department shall identify deficiencies in the notice, provide a deadline by which the deficiencies shall be corrected, and inform the applicant of the need for a pre-licensing inspection. Deficiencies may include the failure to provide required information, documents, or fees. An application is not considered complete until all required documentation, information, and fees have been received.

(A) Letter of acceptance of application for licensure approving the license and authorizing operation after successfully passing the pre-licensing inspection - within 30 days after the date of passing the pre-licensing inspection. The original license may serve as the letter of acceptance.

(B) Letter of application deficiency - within 30 days after receipt of a deficient application.

(C) Letter of pre-licensing inspection deficiency - a notice of deficiency will be issued to the camp representative on site at the conclusion of the pre-licensing inspection if any deficiencies were noted during the inspection. The camp shall provide documentation that all deficiencies have been corrected within 10 days after [of] the inspection or prior to camp operation, whichever comes first.

(3) In the event that an application for a new license is not processed within the timeframe established in paragraph (2)(A) of this subsection, and no good cause exists for the delay, the applicant has the right to request reimbursement of all fees paid in that particular application process so long as a complete application was submitted at least 90 calendar days prior to camp operation. Requests for reimbursement shall be made in writing to the Environmental and Sanitation Licensing Group. Good cause for exceeding the time period is considered to exist if the number of applications for licensure exceeds by 15% or more the number of applications processed the same calendar quarter of the preceding year or any other condition exists giving the department good cause for exceeding the time period.

(4) If the request for reimbursement as authorized by paragraph (3) of this subsection is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and to the department.

(c) Record availability. All records, except criminal background and sex offender registration database checks (including any written evaluation for any staff member or volunteer with a criminal conviction or deferred adjudication), required by this subchapter shall be made available to the department immediately upon request. Criminal background and sex offender registration database checks (including any written evaluation for any staff member or volunteer with a criminal conviction or deferred adjudication) shall be made available to the department within two business days upon request.

(d) Term of license. The term of a youth camp license shall be one year, beginning on the date of issuance.

(e) License non-transferable. A youth camp license is not transferable and may not be sold, assigned, or otherwise transferred. Any new entity that acquires the operation of a youth camp through sale, assignment, or other transfer shall obtain a new license.

(f) Ownership change. A new application, fee, pre-licensing inspection, and license is required if there is a change in ownership.

(g) Name change. If a camp changes its name during operation, but does not change location or ownership, then a new license certificate may be issued if requested using the form designated by the department, available at <http://www.dshs.state.tx.us/youthcamp/forms.shtm>, accompanied by a nonrefundable fee of \$20.

(h) Location change. A new application, fee, pre-licensing inspection, and license is required if there is a change in physical camp location.

(i) Duplicate license. A duplicate license may be issued if requested using the form designated by the department, available at <http://www.dshs.state.tx.us/youthcamp/forms.shtml>, accompanied by a nonrefundable fee of \$20.

(j) Denials.

(1) The department may deny an application for licensing to those who fail to meet the standards established by the rules in this subchapter [these rules]. When the department proposes to deny an application, it shall give notice of the proposed action in writing and shall provide information on how to request an administrative hearing. The applicant shall make a written request for a hearing within 30 days from the date on the notice letter sent by the department. The hearing shall be conducted in accordance with the Act, the Administrative Procedure Act, Government Code, Chapter 2001, and the formal hearing procedures of the department at 25 Texas Administrative Code, §1.21 *et seq.*

(2) A letter of denial of licensure may be issued within 60 days after [of] the receipt of application if the applicant does not meet the requirements of subsection (a)(3)(A) or (B) of this section.

(3) A letter of denial of licensure may be issued if the applicant does not meet the requirements of subsection (a)(3)(C) of this section:

(A) within 60 days following the first scheduled date of camp operations if a pre-licensing inspection has not been completed; or

(B) within 60 days following the first scheduled date of camp operations if the camp does not pass the pre-licensing inspection.

(4) A license holder whose license has been denied or revoked may not reapply for a new license for two years from the date of final denial or revocation.

(k) Refunds.

(1) If the applicant does not meet the requirements of subsection (a)(3)(A) or (B) of this section, the application may be denied and the license fee, less a handling fee of \$50, may be refunded. If an application is denied because the facility does not meet the requirements of subsection (a)(3)(A) or (B) of this section, the applicant should determine if a license from another agency is required.

(2) If the applicant does not meet the requirements of subsection (a)(3)(C) of this section, the application may be denied and the license fee may not be refunded.

§265.24. *Application and Denial of a Renewal License.*

(a) Renewal of a youth camp license. A person holding a license under the Act shall renew the license annually before the license expires.

(b) Renewal notice. At least 60 days before a license expires, the department, as a service to the licensee, may send a renewal notice to the licensee or registrant to the last known address of the licensee. It remains the responsibility of the licensee to keep the department informed of the licensee's current address and to take action to renew the license whether or not they have received the notification from the department. The renewal notice shall state:

- (1) the type of license requiring renewal;
- (2) the time period allowed for renewal; and

(3) the amount of the renewal fee.

(c) Renewal requirements. Renewal applications and fees shall be submitted to the department prior to the license's annual expiration date.

(1) Submitting an application. A renewal application is made by submitting:

(A) a completed youth camp renewal application;

(B) an activity schedule showing dates and detailed information about the activities that are conducted both at the camp and at other locations;

(C) any other requested documents and information; and

(D) paying the renewal license fee as described in §265.28 of this title (relating to Fees).

(2) Obtaining an application. A blank renewal application may be obtained by calling the Environmental and Sanitation Licensing Group at (512) 834-6600, or may be downloaded from the website at www.dshs.state.tx.us/youthcamp/default.shtml. Renewal applications may be submitted to the Environmental and Sanitation Licensing Group, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas 78714-9347.

(3) Qualifying for renewal of a youth camp license. The department shall issue a renewal license if the facility:

(A) meets the definition of a "Youth camp" as described in §265.11(25) of this title (relating to Definitions);

(B) meets the definition of "Youth camp, general characteristics of" in §265.11(27) [§265.11(26)] of this title; and

(C) is in compliance with all provisions of the Act and the rules prior to operation as determined by:

(i) submitting a complete renewal application as described in this subsection;

(ii) passing a pre-licensing inspection conducted by the department, if required; and

(iii) complying with all final orders resulting from any violations of this subchapter [these sections] before the application for renewal is submitted.

(d) Processing renewal applications.

(1) Applications for license renewal under this subchapter [chapter] shall be received by the Environmental and Sanitation Licensing Group prior to the expiration date of the license or 45 days prior to camp operation, whichever is earlier.

(2) The department shall issue the renewal license or a written notice that the renewal application is complete or that the renewal application is deficient within the following periods of time from the date of receipt of the renewal application. The department shall identify deficiencies in the notice and provide a deadline by which the deficiencies shall be corrected in order for the department to renew the license or to schedule the pre-licensing inspection if required. Deficiencies may include the failure to provide required information, documents, or fees, or the failure to schedule or successfully pass the pre-licensing inspection if required. An application is not considered complete until all required documentation, information, and fees have been received. If a camp is subject to pre-licensing inspection, the time period for issuing a letter of acceptance of application for license renewal begins upon successfully passing inspection.

(A) Letter of acceptance of application for license renewal approving the license and authorizing operation - within 30 days. The original license may serve as the letter of acceptance.

(B) Letter of renewal application deficiency - within 30 days after receipt of a deficient renewal application.

(C) Letter of pre-licensing inspection deficiency - a notice of deficiency will be issued to the camp representative on site at the conclusion of the pre-licensing inspection if any deficiencies were noted during the inspection. The camp shall provide documentation that all deficiencies have been corrected within 10 days after [of] the inspection or prior to camp operation, whichever comes first.

(3) In the event that a timely and complete application for license renewal is not processed within timeframe established in paragraph (2)(A) of this subsection, and no good cause exists for the delay, the applicant has the right to request reimbursement of all fees paid in that particular application process. Requests for reimbursement shall be made in writing to the Environmental and Sanitation Licensing Group. Good cause for exceeding the time period is considered to exist if the number of applications for licensure exceeds by 15% or more the number of applications processed the same calendar quarter of the preceding year or any other condition exists giving the department good cause for exceeding the time period.

(4) If the request for reimbursement as authorized by paragraph (3) of this subsection is denied, the applicant may then appeal to the commissioner for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and to the department.

(e) Late renewal. If a license is not renewed within one year after the expiration date, the license may not be renewed. A new license may be obtained by submitting a new application in compliance with §265.23 of this title (relating to Application and Denial of a New License; Non-transferable). If the license is renewed after its expiration date, the renewed license shall expire on the date the license would have expired had it been renewed timely.

(f) Non-renewal. The department may refuse to renew a license if the applicant has not complied with all final orders resulting from any violations of these sections. Eligibility for license renewal may be reestablished by meeting all conditions of the orders and complying with the requirements of this section. The department may not renew the license of a youth camp that has not corrected deficiencies identified in a final order before the application for renewal is submitted. Evidence of corrections, such as photography or documentation satisfactory to the department, shall be submitted to and approved by the Environmental and Sanitation Business Filing and Verification Unit [~~Environmental Health Enforcement Unit of the Division for Regulatory Services~~] prior to submitting the renewal application to the Business Filing and Verification Section [~~Regulatory Licensing Unit~~] of the Consumer Protection Division.

(g) Application determination affecting license expiration. If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the department. If the application is denied, the existing license does not expire until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(h) Reapplication for license upon denial or revocation. A license holder whose license has been denied or revoked may not reapply for a new license for two years from the date of final denial or revocation.

(i) Opportunity for a hearing. When the department proposes to deny an initial or renewal application, it shall give notice of the proposed action in writing and shall provide information on how to request an administrative hearing. The applicant shall make a written request for a hearing within 30 days from the date on the notice letter sent by the department.

(j) Pre-licensing inspections. A youth camp applying for a license renewal may be subject to a pre-licensing inspection. Youth camps shall be in compliance with all provisions of the Act and the rules prior to operation.

(k) Denials.

(1) The department may deny a renewal application for licensing to those who fail to meet the standards established by these rules. Prior to denying a renewal license, the department shall give the applicant an opportunity for a hearing. The hearing shall be conducted in accordance with the Act, the Administrative Procedure Act, Government Code, Chapter 2001, and the formal hearing procedures of the department at 25 Texas Administrative Code §1.21 *et seq.*

(2) A letter of denial of license renewal may be issued within 60 days of the receipt of application if the applicant does not meet the requirements of subsection (c)(3)(A) or (B) of this section.

(3) A letter of denial of license renewal may be issued within 60 days following the first scheduled date of camp operations if the applicant does not meet the requirements of subsection (c)(3)(C) of this section.

(l) Refunds.

(1) If the applicant does not meet the requirements of subsection (c)(3)(A) or (B) of this section, the renewal application may be denied and the renewal license fee, less a handling fee of \$50, may be refunded. If an applicant is denied because the facility does not meet the requirements of subsection (c)(3)(A) or (B) of this section, the applicant should determine if a license from another agency is required.

(2) If the applicant does not meet the requirements of subsection (c)(3)(C) of this section, the renewal application may be denied and the renewal license fee may not be refunded.

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 November 16, 2018.

TRD-201804964

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: January 6, 2019

For further information, please call: (512) 231-5753



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY
INSURANCE
SUBCHAPTER E. TEXAS WINDSTORM
INSURANCE ASSOCIATION
DIVISION 3. LOSS FUNDING, INCLUDING
CATASTROPHE RESERVE TRUST FUND,
FINANCING ARRANGEMENTS, AND PUBLIC
SECURITIES

28 TAC §§5.4111, 5.4113, 5.4114

The Texas Department of Insurance proposes to amend 28 TAC §§5.4111, 5.4113, and 5.4114, concerning the Texas Windstorm Insurance Association's (association's) catastrophe reserve trust fund (CRTF). The amendments implement Senate Bill 900, 84th Legislature, Regular Session (2015).

EXPLANATION. The CRTF is an account administered by the Texas Comptroller dedicated to the payment of future association catastrophe losses. SB 900 requires the Commissioner to adopt rules for the release of money from the CRTF to pay operating expenses, including reinsurance and alternative risk financing mechanisms, when premium is not enough. It is necessary to amend §§5.4111, 5.4113, and 5.4114 to implement SB 900, in order to allow the association to pay operating expenses with money normally set aside in the CRTF to pay claims when it does not have enough premium and other revenue to pay its operating expenses.

Section 5.4111 concerns the CRTF's general operation, payments, and maintenance. Amending §5.4111 is necessary to reflect that SB 900 amended Insurance Code §2210.453 to prohibit the association's reinsurance from attaching at a point lower than the aggregate amount of all available funding.

Section 5.4113 concerns how the Texas Treasury Safekeeping Trust Company invests CRTF funds. Amending §5.4113 is necessary to conform the statutory references to SB 900's changes. SB 900 added Insurance Code §2210.4521, requiring that CRTF funds above the amount necessary to pay for insured losses and for reinsurance or alternative risk financing be invested in accordance with Government Code §404.024(j). Subsection (j) of §404.024 describes an investment standard that a person of "ordinary prudence, discretion, and intelligence" would use in managing their own affairs. CRTF funds below the specified amount are invested as provided in Government Code §404.106 and the remainder of Government Code §404.024.

Section 5.4114 describes the procedures for disbursing funds from the CRTF. Amending §5.4114 is necessary to reflect that SB 900 amended Insurance Code §2210.453 to prohibit the association's reinsurance from attaching at a point lower than the aggregate amount of all available funding. Amending §5.4114 is also necessary to establish procedures for disbursing funds from the CRTF to pay for the association's operating expenses, including reinsurance or alternative risk financing mechanisms, when the association does not have sufficient premium or other revenue. The association must request CRTF funds for operating expenses by submitting a written request to the Commissioner that includes an itemized list of operating expenses and describes the event that caused the need for the disbursement. Except for disbursements to pay for reinsurance or alternative risk financing mechanisms, the Commissioner will authorize the release of funds only for operating expenses the Commissioner

deems essential on a short-term basis. The Commissioner may authorize an operating expense disbursement in an amount that allows the association to exceed the minimum funding level required under Insurance Code §2210.453.

In addition to the previously described amendments, the proposed amendments to §§5.4111, 5.4113, and 5.4114 include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and to improve clarity.

TDI received comments on an informal working draft posted on TDI's website on April 26, 2018. TDI considered those comments when drafting this proposal. The comments supported the proposed amendments.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mark Worman, acting deputy commissioner of the Regulatory Policy Division, has determined that for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal.

Mr. Worman does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Worman expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code §§2210.452, 2210.4521, and 2210.453. The amendments will also have the public benefit of providing a transparent means for the association to request and receive CRTF funds for reinsurance or to meet operating expenses when it does not have sufficient premium and other revenue. Finally, in allowing the Commissioner to approve a disbursement for reinsurance in excess of the amount needed to meet the statutory minimum, the amendments give the association flexibility in the amount of reinsurance it can purchase.

Mr. Worman expects that the proposed amendments will impose an economic cost on the association. According to the association, it will incur this cost by describing the events that necessitate a disbursement to pay for operating expenses. The association estimates that accomplishing this task will cost less than \$500. The other requirements the amendments impose for an operating expense disbursement request, itemizing operating expenses and giving the amount requested, call for information the association already gathers in its normal course of business. The current rules address requests for funds to pay for a catastrophic event or to pay for costs associated with maintaining the CRTF. The proposed amendments do not add to the costs associated with requests addressed in the current rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. As specified in the Public Benefit and Cost Note section of this proposal, the proposed amendments will have a small economic impact on the association. The association is not a small or micro business or a rural community as defined in Government Code §2006.001. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no

additional rule amendments are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. The proposed rule implements Insurance Code §2210.452 and §2210.453, as amended by SB 900, 84th Legislature, Regular Session (2015) and §2210.4521, as added by SB 900. SB 900 does not specifically state that Government Code §2001.0045 applies to rules implementing it.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect,

-the proposed rule will not create or eliminate a government program;

-the proposed rule will not require the creation of new employee positions or the elimination of existing employee positions;

-the proposed rule will not require an increase or decrease in future legislative appropriations to the agency;

-the proposed rule will not require an increase or decrease in fees paid to the agency;

-the proposed rule will create a new regulation in 28 TAC §5.4114(c);

-the proposed rule will not expand, limit, or repeal an existing regulation;

-the proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and

-the proposed rule will not positively or adversely affect the Texas economy because any effects are due to SB 900's amendments to Insurance Code §§2210.452, 2210.4521, and 2210.453. The method the proposed amendments use to implement SB 900 impose some costs on the association, as stated in the Public Benefit and Cost Note, but these costs are too small to affect the Texas economy. It is possible that allowing the disbursement of CRTF funds to exceed the minimum required funding level would enable the association to obtain better reinsurance rates than it could otherwise, which could positively affect the Texas economy, but this effect is too uncertain to claim.

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. Submit any written comments on the proposal no later than 5:00 p.m., central time, on January 7, 2019. Send your comments 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. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, 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. The request for public hearing must be received by the department no later than 5:00 p.m., central time, on January 7, 2019. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §§5.4111, 5.4113, and 5.4114, under Insurance Code §§2210.008, 2210.452(f), and 36.001. Section 2210.008 allows the Commissioner to adopt rules as reasonable and necessary to implement Chapter 2210. Section 2210.452(f) directs the Commissioner to adopt rules establishing the procedure for distributing funds from the CRTF to pay for operating expenses. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 5.4111 implements Insurance Code §2210.453, enacted by SB 900, 84th Legislature, Regular Session (2015). Section 5.4113 implements Insurance Code §2210.4521, enacted by SB 900. Section 5.4114 implements Insurance Code §2210.452 and §2210.453, enacted by SB 900.

§5.4111. *Operation of the Catastrophe Reserve Trust Fund.*

(a) In general [General].

(1) The comptroller must [~~shall~~] administer the CRTF [~~eatastrophe reserve trust fund~~] in accordance with Insurance Code Chapter 2210[~~;~~] and this subchapter.

(2) The comptroller must [~~shall~~] ensure that all money received from the association under [~~Association pursuant to~~] subsection (b) of this section is deposited with the trust company in the CRTF [~~eatastrophe reserve trust fund~~].

(3) The trust company must [~~shall~~] receive, disburse, invest, hold, and manage all money deposited in the CRTF [~~eatastrophe reserve trust fund~~].

(4) All money, including investment income, deposited in the CRTF constitutes [~~eatastrophe reserve trust fund is~~] state funds to be held by the comptroller outside the state treasury on behalf of, and with legal title in, the department until disbursed as provided by [~~the~~] Insurance Code Chapter 2210 and this subchapter.

(b) Payment of funds [~~Funds~~] to the CRTF [~~Catastrophe Reserve Trust Fund~~].

(1) Except as provided by statute, on an annual basis, the association must [~~Association shall~~] pay the net gain from operations of the association [~~Assoeiation~~] directly to the comptroller for deposit with the trust company in the CRTF [~~eatastrophe reserve trust fund~~].

(2) In a [~~time~~] period acceptable to the trust company and the comptroller, but not more frequently than monthly, the association must [~~Association shall~~] pay all premium surcharges collected under [~~the~~] Insurance Code §2210.259 during the preceding period, and accumulated investment income on those premium surcharges, directly to the comptroller for deposit with the trust company in the CRTF [~~eatastrophe reserve trust fund~~]. Premium surcharges [~~collected by~~] the association collects under [~~Association pursuant to the~~] Insurance Code §2210.259 and investment income on those funds are not gross premium or other revenue of the association [~~Assoeiation~~] and must be accounted for separately from the association's [~~Association's~~] gross premium and other revenue.

(3) As necessary, the association must [~~Association shall~~] pay directly to the comptroller for deposit with the trust company in the CRTF [~~eatastrophe reserve trust fund~~] all:

(A) excess public security proceeds resulting from [~~the~~] Insurance Code §2210.608; and

(B) excess premium surcharges resulting from [the] Insurance Code §2210.611 and §5.4144 of this title [subchapter] (relating to Excess [Class 2] Premium Surcharge Revenue)[; and]

[(C) excess member assessments resulting from §5.4145 and §5.4147 of this subchapter (relating to Excess Class 2 Member Assessment Revenue; and Excess Class 3 Member Assessment Revenue)]-

(4) All deposits received by the trust company under this subsection must [shall] be deposited in the CRTF [catastrophe reserve trust fund] immediately on [upon] receipt.

[(c) Disbursements from the Catastrophe Reserve Trust Fund.]

[(1) Prior to a disbursement of funds from the catastrophe reserve trust fund other than a disbursement under paragraph (3) of this subsection, the department must determine that:]

[(A) a catastrophic event has occurred; and]

[(B) the catastrophic event has resulted in losses in excess of available reinsurance proceeds.]

[(2) To disburse funds from the catastrophe reserve trust fund in response to a catastrophic event, the commissioner or an authorized representative of the department shall issue a letter of instruction to the trust company, specifying the amount of money to be disbursed in immediately available funds and specifying any third party payee.]

[(3) To disburse funds from the catastrophe reserve trust fund to pay for costs associated with maintaining or managing the catastrophe reserve trust fund, the commissioner or an authorized representative of the department shall issue a letter of instruction to the trust company specifying the amount of money to be paid and specifying any third party payee.]

(c) [(d)]Maintenance of the CRTF [Catastrophe Reserve Trust Fund].

(1) In maintaining and managing the CRTF [catastrophe reserve trust fund], the trust company has the same [shall be charged with the] duty of care that [; which] applies to the comptroller as trustee of funds in the treasury.

(2) The department will [shall] pay the trust company an amount sufficient to reimburse the trust company for the actual monthly costs of administering and maintaining the CRTF [catastrophe reserve trust fund]. The trust company must [shall] deduct the appropriate amount directly from the CRTF's earnings [of the catastrophe reserve trust fund] and advise the department monthly in writing of the amount of these costs.

(3) The trust company must [shall] submit to the department a report of all transactions relating to the CRTF [catastrophe reserve trust fund] promptly after the end of each month. The trust company must [shall] furnish other information relating to the CRTF [catastrophe reserve trust fund] as the department may reasonably request from time to time.

(4) The trust company must [is required to] keep a book of records in which the complete and correct entries are made of all transactions relating to the receipts, disbursements, deposits, withdrawals, and transfers in the CRTF [catastrophe reserve trust fund] in accordance with generally accepted accounting principles. The records must [shall] be available for inspection by an authorized representative of the department at all reasonable hours of the business day and under reasonable conditions.

§5.4113. *Investments of Catastrophe Reserve Trust Fund.*

(a) Subject to Insurance Code §2210.4521, the [The] money in the CRTF [catastrophe reserve trust fund] may only be invested in investments as authorized by [the] Government Code §404.024 and §404.106, and as amended.

(b) The association [Association] does not have authority to direct investments or money in the CRTF [catastrophe reserve trust fund].

(c) All earnings and losses from the investment of funds in the CRTF must [catastrophe reserve trust fund shall] be credited to or charged against the CRTF [catastrophe reserve trust fund]. Investment income on money in the CRTF must [trust fund shall] be maintained as part of the funds in the CRTF [trust fund].

(d) CRTF [The] funds [of the catastrophe reserve trust fund] may be intermingled with other funds held by the trust company for the purposes of common investment and operational efficiency.

§5.4114. *Disbursements from the Catastrophe Reserve Trust Fund [Duties and Responsibilities].*

(a) Disbursements in response to a catastrophic event require the following:

(1) In the event that the association reasonably estimates that a catastrophic event has occurred, the general manager of the association must provide the Commissioner and the comptroller a definitive written statement containing the total amount of the estimated catastrophic losses, potential reinsurance recoveries related to those losses, and the estimated portion of the catastrophic losses that exceeds the catastrophe year's premium and other revenue of the association;

(2) The Commissioner or an authorized representative of the department, on receiving the statement described in (a)(1), must have determined that a catastrophic event has occurred;

(3) The Commissioner or an authorized representative of the department must provide the trust company with a letter of instruction to pay the association or any third-party payee an amount from the CRTF that is equal to the lesser of either:

(A) the portion of the catastrophic loss that exceeds the catastrophe year's premium and other revenue of the association, or

(B) the balance of the CRTF; and

(4) The association must report to the Commissioner and the comptroller any subsequent change in the amount of catastrophic losses. If the change results in an increase in the amount of catastrophic losses, the association may request additional disbursements under this subsection. If the change results in a decrease in the amount of catastrophic losses, subsection (g) of this section applies. [In the event that the Association reasonably estimates that a catastrophic event has occurred, the general manager of the Association shall promptly notify the commissioner and the comptroller in writing of the total amount of the estimated catastrophic losses and potential reinsurance recoveries related to those losses. The general manager of the Association shall further promptly notify the commissioner and the comptroller in writing of any subsequent changes in such estimates.]

(b) To disburse funds to pay for costs associated with maintaining or managing the CRTF, the Commissioner or an authorized representative of the department must issue a letter of instruction to the trust company specifying the amount of money to be paid and specifying any third-party payee. [Upon receipt of a definitive written statement from the Association's general manager that a catastrophic event has occurred and that the catastrophic losses exceed available reinsurance proceeds, the commissioner or an authorized representative of the department shall provide a letter of instruction to pay the Association an amount from the catastrophe reserve trust fund that is equal to the

lesser of the portion of the catastrophic loss that exceeds the premium and other revenue of the Association and available reinsurance proceeds or the balance of the catastrophe reserve trust fund. The Association shall report to the department any subsequent changes in the amount of catastrophic losses and the amount due either party shall be remitted promptly. Any funds received by the Association from the catastrophe reserve trust fund but not expended for the payment of loss and loss adjustment expenses shall be remitted by the Association to the catastrophe reserve trust fund.]

(c) To request a disbursement to pay for operating expenses, including reinsurance or alternative risk financing mechanisms under Insurance Code §2210.453, the association must submit a written request to the Commissioner, copied to the comptroller, that includes: [In authorizing the release of catastrophe reserve trust funds, the commissioner may rely on any statements or notifications of definitive or estimated losses, Association revenue, reinsurance proceeds, or any other related or supporting information, from any source, including the general manager of the Association.]

(1) an itemized list of operating expenses;

(2) the total amount of funds the association is requesting under this subsection; and

(3) a description of the event or events that caused the association to lack sufficient premium and other revenue to pay for the listed operating expenses.

(d) With the exception of disbursements to pay for reinsurance or alternative risk financing mechanisms under Insurance Code §2210.453, the Commissioner may only authorize the release of funds under subsection (c) of this section for operating expenses the Commissioner deems essential on a short-term basis.

(e) The Commissioner may authorize a disbursement under subsection (c) of this section in an amount that enables the association to exceed the minimum funding level required under Insurance Code §2210.453.

(f) In authorizing the release of CRTF funds, the Commissioner may rely on any statements or notifications of definitive or estimated losses, association revenue, reinsurance proceeds, or any other related or supporting information, from any source, including the general manager of the association.

(g) The association must remit to the CRTF any funds remaining after the purpose for which the funds were disbursed from the CRTF has been met.

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 November 26, 2018.

TRD-201804997

Norma Garcia

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: January 6, 2019

For further information, please call: (512) 676-6584

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Sergio Ledesma

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.61

The Texas Real Estate Commission withdraws the proposed amended §535.61 which appeared in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5646).

Filed with the Office of the Secretary of State on November 19, 2018.

TRD-201804979

Kerri Lewis

General Counsel

Texas Real Estate Commission

Effective date: November 19, 2018

For further information, please call: (512) 936-3092

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.212, 535.213, 535.218

The Texas Real Estate Commission withdraws the proposed amendments to §§535.212, 535.213, 535.218, which appeared in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5657).

Filed with the Office of the Secretary of State on November 19, 2018.

TRD-201804985

Kerri Lewis

General Counsel

Texas Real Estate Commission

Effective date: November 19, 2018

For further information, please call: (512) 936-3092



Angel Banda
6th 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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 15. EGG LAW

4 TAC §15.5

The Texas Department of Agriculture (the Department) adopts amendments to Title 4, Part 1, Chapter 15, §15.5 of the Texas Administrative Code, concerning special fees for the egg law program, without changes to the proposal published in the October 19, 2018, issue of the *Texas Register* (43 TexReg 6921). The amended rule will not be republished in this issue of the *Texas Register*.

The amendments to §15.5 decrease the special fees for eggs. As a result of the economic expansion and population growth in Texas, and an increased export market for eggs out of state, Texas is experiencing additional demand for eggs produced in this state. Due to increased production of eggs, as well as ongoing cost savings and efficiencies, the Department has determined the adopted reduction in special fees will allow it to continue to effectively provide consumer protection for the egg law program and meet industry needs.

The Department received one comment in favor of the proposal from James Grimm, on behalf of the Texas Egg Council.

The amendments are adopted under Texas Agriculture Code, §132.003 which designates the Department as the agency for egg law regulation and §§132.026, 132.027, 132.028, and 132.043 which require the Department to charge fees for each egg law licenses.

The code affected by the adoption is Chapter 132 of the Agriculture Code.

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

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

TRD-201804994

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: December 11, 2018

Proposal publication date: October 19, 2018

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



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 6. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM

10 TAC §6.404

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 6, Community Affairs Programs, Subchapter D, Weatherization Assistance Program, §6.404, Distribution of WAP Funds as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6053). The purpose of the repeal is to eliminate an outdated rule which warrants revision while adopting a new updated rule under separate action.

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

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making a change to an existing activity, of a rule governing the administration of the Low Income Home Energy Assistance Program ("LIHEAP").
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, of the rules governing the administration of the LIHEAP.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section will be unaffected as the repealed rule will be replaced with a similar rule. There will not be economic costs to individuals required to comply with the repealed section.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment September 21, 2018, through October 22, 2018. There were no comments submitted regarding the repeal of 10 TAC §6.404, Distribution of WAP Funds.

The Board adopted the final order adopting the repeal on November 8, 2018.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

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 November 20, 2018.

TRD-201804990

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Effective date: December 10, 2018

Proposal publication date: September 21, 2018

For further information, please call: (512) 936-7828



10 TAC §6.404

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 6, Community Affairs Programs, Subchapter D, Weatherization Assistance Program, §6.404, Distribution of WAP Funds with changes to the proposed text as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6054). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306, Subchapter E, and to update the rule to provide greater clarity to Subrecipients on how Low Income Home Energy Assistance Program ("LIHEAP") funds can be moved from one activity to another and explains how that request will be handled.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. This rule establishes a method by which the Department may act upon a request by a subrecipient to transfer its LIHEAP WAP funds to LIHEAP Comprehensive Energy Assistance Program ("CEAP"). This is sometimes necessary such as in the case of a subrecipient who is not able to fully expend their LIHEAP WAP funding due to a shortage in contractor capacity. Because utility assistance (i.e., CEAP) is often in high demand by low income Texans, it is reasonable to permit the transfer of WAP funds to CEAP in certain cases. This revision will provide more clarity to the process that will be used in response to such a request. The Department does not anticipate any costs associated with this new rule. Tex. Gov't Code Chapter 2306, Subchapter E, provides for the implementation of this new rule.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the administration of the Low Income Home Energy Assistance Program ("LIHEAP").
2. The new rule does not require a change in work that will require the creation of new employee positions, nor is the new rule significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The new rule does not require additional future legislative appropriations.
4. The new rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306, Subchapter E.

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

2. This rule relates to the Department ensuring that subrecipients of LIHEAP have the flexibility to pursue changing the activity type of those funds. Other than a LIHEAP subrecipient who may consider itself to be a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the new rule. However, if a LIHEAP subrecipient considers itself a small or micro-business, this rule provides greater flexibility in their opportunity to request changes in how their LIHEAP funds are used among activity types.

3. The Department has determined that because this rule applies only to existing LIHEAP subrecipients, there will be no economic effect on small or micro-businesses or rural communities.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there would be no economic effect on local employment because the rule relates only to flexibility to move LIHEAP funds among activities for existing LIHEAP providers; therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule provides the same opportunity for changes to any LIHEAP recipient, regardless of location, there are no "probable" effects of the new rule on particular geographic regions.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be greater flexibility for LIHEAP recipients in how they program their funds. There will not be economic costs to individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because this section only provides greater flexibility for subrecipients in a process that has been in effect for several years.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 21, 2018, and October 22, 2018. There were no comments received regarding new 10 TAC §6.404, Distribution of WAP Funds.

The Board adopted the final order adopting the new rule on November 8, 2018.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

§6.404. Distribution of WAP Funds.

(a) Except for the reobligation of deobligated funds, the Department distributes funds to Subrecipients by an allocation formula.

(b) The allocation formula allocates funds based on the number of Low Income Households in a service area and takes into account certain special needs of individual service areas, as set forth below. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse Population Density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

(1) County Non-Elderly Poverty Household Factor--The number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor--The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;

(3) County Inverse Household Population Density Factor--

(A) The number of square miles of the county divided by the number of Households of the county (equals the inverse Household population density of the county); and

(B) Inverse Household Population density of the county divided by the sum of inverse Household densities.

(4) County Median Income Variance Factor--

(A) State median income minus the county median income (equals county variance); and

(B) County variance divided by sum of the State county variances;

(5) County Weather Factor--

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(C) The five factors carry the following weights in the allocation formula: number of Non-Elderly Poverty Households (40 percent), number of poverty Households with at least one member who is 60 years of age or older (40 percent), Household density as an inverse ratio (5 percent), the median income of the county (5 percent), and a weather factor based on heating degree days and cooling degree days (10 percent). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

(i) County Non-Elderly Poverty Household Factor (0.40) plus;

(ii) County Elderly Poverty Household Factor (0.40) plus;

(iii) County Inverse Household Population Density Factor (0.05) plus;

(iv) County Median Income Variance Factor (0.05) plus;

(v) County Weather Factor (0.10);

(vi) total sum of clauses (i) - (v) of this subparagraph multiplied by total funds allocation equals the county's allocation of funds.

(vii) the sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent that Contract funds have been deobligated, or should additional funds become available, those funds will be allocated using this formula or other method approved by the Department's Board to ensure full utilization of funds within a limited timeframe, including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

(d) In the event that a Subrecipient who has been awarded LIHEAP WAP funds elects to voluntarily transfer some portion of their LIHEAP WAP funds to the LIHEAP CEAP activity, a request to do so must be submitted prior to August 1 of the first year of the federal LIHEAP award period. The amount of funds being voluntarily transferred will be returned to the Department and redistributed among LIHEAP CEAP providers to ensure appropriate coverage among counties. This may mean the LIHEAP funds are awarded to that same Subrecipient having made the request, but alternatively could mean that the funds may be awarded to one or more other CEAP Subrecipients providing CEAP services in the counties for which the WAP funds were transferred. The Department will distribute the funds proportionally to the affected counties and CEAP Subrecipients in the service area using the allocation formula in §6.303 of this title (relating to Distribution of CEAP Funds).

(e) Subrecipients that do not expend more than 20 percent of Program Year formula allocation (excluding any additional funds that may be distributed by the Department and any funds voluntarily transferred to LIHEAP CEAP) by the end of the first quarter of the year following the Program Year for two consecutive years will have funding recaptured. LIHEAP-WAP funding recapture will be consistent with Chapter 2105. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years.

(f) The cumulative balance of the funds made available through subsection (e) of this section will be allocated proportionally

by formula to the entities that expended 90 percent of the prior year's Contract, excluding adjustments made in subsection (e), by the end of the original Contract Term.

(g) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.

(h) The Department may, in the future, undertake to reprocure the Subrecipients that comprise the network of Weatherization providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

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 November 20, 2018.

TRD-201804991

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Effective date: December 10, 2018

Proposal publication date: September 21, 2018

For further information, please call: (512) 936-7828



CHAPTER 12. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§12.1 - 12.10

The Texas Department of Housing and Community Affairs (the "Department") adopts the amended 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rule ("Bond Rule") with changes to §12.1, §12.2, and §§12.4 - 12.9 as published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6147). These sections will be republished. No changes were made to §12.3 and §12.10 and will not be republished. The purposes of the amended sections are to provide compliance with Tex. Gov't Code §2306.359 and to update the rule to: clarify that taxable bonds are not eligible for housing tax credits, clarify that threshold requirements at full application are not reviewed at the time of pre-application, clarify how statements made by a state elected official would constitute support and ensure consistency with how such statements are evaluated under the Qualified Allocation Plan, update references to other rules that are used, clarify that rehabilitation developments may proceed with closing without providing the Department with evidence that building permits will be received prior to closing, so long as confirmation that lender and/or equity partners are comfortable with proceeding with closing, clarify that applications layered with housing tax credits may elect the income averaging set-aside but that bond restrictions are not eligible for income averaging, and clarify how the first year of the issuer administration fee and the ongoing issuer administration fee is calculated.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted pursuant to item (9), which excepts rule changes necessary to implement legislation. The amended rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

David Cervantes, Acting Director, has determined that, for the first five years the amended rules will be in effect:

1. The amended rule does not create or eliminate a government program, but relates to the adoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").
2. The amended rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The amended rule changes do not require additional future legislative appropriations.
4. The amended rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The amended rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The amended rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The amended rule does not increase nor decrease the number of individuals subject to the rule's applicability.
8. The amended rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of \$8,500 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The filing fees associated with a full application for PAB which is layered with LIHTC may range from \$480 to \$2,400 which is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. The rule places a limit on the maximum number of Units that can be proposed, at 80 Units.

These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the amended rules for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20 percent of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

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

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the amended rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a typical minimum investment of \$10 million in capital, and more commonly an investment from \$20 million to \$30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the amended rules on particular geographic regions. If anything,

positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of the amended sections will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the amended sections because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amended sections are in effect, enforcing or administering the amended sections do not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being amended.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 21, 2018, and October 12, 2018. No comments were received.

The Board adopted the final order adopting the amended sections on November 8, 2018.

STATUTORY AUTHORITY. The amended sections are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the amended sections affect no other code, article, or statute.

§12.1. General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds ("Bonds") by the Texas Department of Housing and Community Affairs ("Department"). The Department is authorized to issue Bonds pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code ("Code"), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan ("QAP") in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board ("TBRB"). If the applicable QAP or Uniform Multifamily Rules contradict rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter

except in an instance of a conflicting statutory requirement, which shall always take precedence.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any point during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis. Taxable bonds will not be eligible for an allocation of tax credits.

(e) Waivers. Requests for any permitted waivers of program rules must be made in accordance with §11.207 of this title (relating to Waiver of Rules).

§12.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(1) [(3)] Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

(2) [(4)] Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(3) [(2)] Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

§12.4. Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) Neighborhood Risk Factors. If the Development Site has any of the characteristics described in §11.101(a)(3)(B) of this title (re-

lating to Site and Development Requirements and Restrictions), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the neighborhood risk factors become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §11.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions) and the Applicant failed to disclose.

(c) **Pre-Application Process.** An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(d) **Scoring and Ranking.** The Department will rank the pre-application according to score within each priority defined by Tex. Gov't Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359. Should two or more pre-applications receive the same score, the tie breaker will go to the pre-application with the highest number of points achieved under §12.6(8) of this chapter (relating to Underserved Area) to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(e) **Inducement Resolution.** After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application or that an inducement resolution be approved despite the presence of neighborhood risk factors not fully evaluated by staff. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §11.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §11.204(10) of this title at the time of Application;

(4) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(5) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable. The List of Organizations form, as provided in the pre-application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(6) Distribution List Form, as provided in the pre-application, to include the anticipated financing participants;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this title (relating to Public Notifications) (§2306.6705(9)). Notifications must not be older than three months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a five percent increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should the person holding any position or role identified in §11.203 of this title change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new person no later than the Full Application Delivery Date.

§12.6. Pre-Application Scoring Criteria.

This section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Tex. Gov't Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) Set aside 50 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of Units rent capped at 60 percent AMGI; or

(ii) Set aside 15 percent of Units rent capped at 30 percent AMGI and the remaining 85 percent of Units rent capped at 60 percent AMGI; or

(iii) Set aside 100 percent of Units rent capped at 60 percent AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80 percent of the Units capped at 60 percent AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as either the Building Cost or the Hard Costs as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs. Pre-applications that do not exceed \$95 per square foot of Net Rentable Area will receive one point. Rehabilitation will automatically receive (1 point).

(3) Unit Sizes. (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) Five-hundred-fifty (550) square feet for an Efficiency Unit;

(B) Six-hundred-fifty (650) square feet for a one Bedroom Unit;

(C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the State Restrictive Period for a Development to a total of 35 years.

(5) Unit and Development Construction Features. A minimum of (9 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The points selected at pre-application and/or Application will be required to be identified in the LURA and the points selected must be maintained throughout the State Restrictive Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in sub-

paragraphs (A) - (F) of this paragraph. The common amenities include those listed in §11.101(b)(5) of this title and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same.

(A) Developments with 16 to 40 Units must qualify for (4 points);

(B) Developments with 41 to 76 Units must qualify for (7 points);

(C) Developments with 77 to 99 Units must qualify for (10 points);

(D) Developments with 100 to 149 Units must qualify for (14 points);

(E) Developments with 150 to 199 Units must qualify for (18 points); or

(F) Developments with 200 or more Units must qualify for (22 points).

(7) Resident Supportive Services. (7 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this title, appropriate for the residents and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA and must be maintained throughout the State Restrictive Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site is located in an Underserved Area as further described in §11.9(c)(5)(A) - (E) of this title. The pre-application must include evidence that the Development Site meets this requirement.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and must be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or

community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) All elected members of the Governing Body of the county in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

(G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (10 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

§12.7. Full Application Process.

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11.201 of this title (relating to Procedural Requirements for Application Submission).

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 11 of this title in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. The Department will hold a public hearing to receive comments pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include at minimum, a de-

scription of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Appeals Process). To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be submitted to the Department. For Rehabilitation Developments, in instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

§12.8. Refunding Application Process.

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) with the exception of criteria stated therein specific to the Competitive Housing Tax Credit Program. At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to

each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

§12.9. *Occupancy Requirements.*

(a) **Filing and Term of Regulatory Agreement.** A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) The longer of 30 years, from the date the Development Owner takes legal possession of the Development;

(2) The end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or

(3) The period required by the Code.

(b) **Federal Set Aside Requirements.**

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph. Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph.

(A) At least 20 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50 percent of the area median income; or

(B) At least 40 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60 percent of the area median income.

(2) The Development Owner must, at the time of Application, indicate which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonable proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit. However, should a tenant's income, as of the most recent determination thereof, exceed 140 percent of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

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 November 20, 2018.

TRD-201804992

David Cervantes

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Texas Department of Housing and Community Affairs

Effective date: December 10, 2018

Proposal publication date: September 21, 2018

For further information, please call: (512) 475-3929



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §§159.3, 159.105, 159.108, 159.155

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.3, Appraisal Management Company Advisory Committee; §159.105, Denial of Registration or Renewal of Registration; §159.108, Renewal; and 159.155, Periodic Review of Appraisals, with changes to the text of §159.155 as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5746); therefore, the rule will be republished.

The amendments are recommended for adoption with changes by the TALCB Executive Committee and AMC Members of the AMC Advisory Committee following a comprehensive review of this Chapter to better reflect current TALCB procedures and to simplify and clarify where needed and to align the rules with changes to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board (ASB). The amendments to §159.3 align the rule with Texas Occupations Code §1103.159; clarify that a quorum of the AMC Advisory Committee is three members; and renew the AMC Advisory Committee through September 1, 2022, to coincide with the agency's next quadrennial rule review. The amendments to §159.105 and §159.108 align these rules with other TALCB rules and processes for license or registration renewals. The amendments to §159.155 reduce the percentage of required periodic reviews from five to two percent of reviews performed by an AMC in a twelve-month period; conform the rule to changes to USPAP adopted by the ASB; and align the required scope of work to perform a periodic review to the requirements for performing an appraisal review in USPAP.

The reasoned justification for the amendments is to align TALCB rules with USPAP, conform TALCB rules with current practices, and provide clarity for license holders and members of the public.

Three comments were received on the amendments as published, and one comment was from a trade association. Two commenters supported adoption of the amendments as published. One commenter suggested changing the phrase "appraisal under review" to "work under review" throughout the rule to align the language of the rule with the language of USPAP. This commenter also suggested removing the phrase "real property appraisal consulting conclusions" from subsection (f) to align

the rule with USPAP because that phrase is not included in Standards 3 and 4 of USPAP. Members of the AMC Advisory Committee also recommended removing "and USPAP" from subsection (e) of the amendments as published. The Executive Committee recommends the Board adopt the amendments with these changes. TALCB agrees with the Executive Committee's recommendation to adopt the amendments with changes to the text of §159.155.

The revisions to §159.155 as adopted do not change the nature or scope so much that the rule as adopted could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed rule.

The amendments are adopted under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

The statute affected by these amendments and rules is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the amendments.

§159.155. Periodic Review of Appraisals.

(a) A license holder must review the work of appraisers performing appraisal services on 1-4 family unit properties collateralizing mortgage obligations by performing a review in accordance with Standards 3 and 4 of USPAP of:

(1) one of the first five appraisals performed for the license holder by each appraiser, prior to making a sixth assignment; and

(2) a total of two percent, randomly selected, of the appraisals performed for the AMC for each twelve-month period following the date of the AMC's registration.

(b) Appraisal reviews performed pursuant to subsection (a)(1) of this section will be counted toward the calculation of two percent for the purposes of subsection (a)(2) of this section.

(c) An appraisal review pursuant to subsection (a)(1) of this section is not required if the first five appraisals by an appraiser were completed before the AMC was required by the AMC Act to be registered with the Board.

(d) An appraiser is qualified to perform an appraisal review within the meaning of §1104.153 of the AMC Act if the appraiser conducting the review:

(1) is licensed or certified to act as an appraiser in Texas or another jurisdiction;

(2) holds the appropriate credential to have performed the appraisal being reviewed; and

(3) does not develop an opinion of value.

(e) To satisfy the requirements of the AMC Act and this rule, a license holder performing an appraisal review must develop a credible opinion about the completeness, accuracy, adequacy, relevance and reasonableness of the work under review and adhere to the following minimum scope of work:

(1) research and consult the appropriate data sources for the work being reviewed to, at a minimum, validate the significant characteristics of the comparables and the essential elements of the transactions including:

(A) the multiple listing service(s) or other recognized methods, techniques and data sources for the geographic area in which

the work under review was performed, if the work under review included a sales comparison approach; and

(B) the sales or listing history of the property which is the subject of the work under review, if that property was sold within the three years prior to the effective date of the work under review or listed for sale as of the effective date of the work under review;

(2) provide a certification that complies with Standard 4 of USPAP.

(f) If the reviewer elects to develop an opinion of value or review opinion, the review must comply with the additional provisions of Standards 3 and 4 of USPAP governing the development of an opinion of value or review opinion.

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 November 19, 2018.

TRD-201804971

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Texas Appraiser Licensing and Certification Board

Effective date: December 9, 2018

Proposal publication date: September 7, 2018

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES AND PENALTIES

22 TAC §175.5

The Texas Medical Board (Board) adopts amendments to §175.5, concerning Payment of Fees or Penalties. The amendments are being adopted without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6585). The adopted amendments will not be republished.

The amendments establish requirements and procedures for the refund of certain licensure fees in the event of a licensee's or applicant's death.

The amendment to subsection (c)(6) adds language requiring a request for refund from the spouse or personal representative of a licensee or applicant who dies within 90 days of having paid a licensure fee. The amendment makes clear that a refund is not automatically processed by the Board upon a licensee or applicant's death.

The amendment to subsection (c)(7) also adds language giving some discretion to the Executive Director as to whether to a licensure fee should be fully refunded if it was paid more than 90 days before the licensee's or applicant's death. The amendment makes it possible for the Board to issue a full refund in a unique situation, such as when a licensee or applicant has paid a fee more than 90 days before his or her death, but has not yet received the license or registration.

No comments were received on adoption of the proposed amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated §153.001, which provides authority for the Board to recommend rules necessary to administer and enforce Title 3, Subtitle B of the Texas Occupations Code. The amendments are also adopted under the authority of the Texas Occupations Code Annotated §153.051, which provides authority for the board to establish 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.

Filed with the Office of the Secretary of State on November 16, 2018.

TRD-201804966

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Effective date: December 6, 2018

Proposal publication date: October 5, 2018

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 219. ADVANCED PRACTICE REGISTERED NURSE EDUCATION

22 TAC §§219.1 - 219.7, 219.9 - 219.12

Introduction

The Texas Board of Nursing (Board) adopts amendments to §§219.1 - 219.7, 219.9 - 219.12, relating to Advanced Practice Registered Nurse Education. The amendments are adopted without changes to the proposed text published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6744). However, a minor editorial change to the title of Chapter 219 has been made to include the word "registered" so that the title reads Advanced Practice Registered Nurse Education.

Reasoned Justification

The amendments are adopted under the authority of the Occupations Code §301.151 and, in general, make editorial conforming changes to the rule text.

Background

Chapter 219 addresses advanced practice registered nurse (APRN) education in Texas. Specifically, Chapter 219 applies to APRN programs that have yet to receive approval or accreditation by a national APRN educational accrediting body. Because only graduates of an accredited program are eligible for APRN licensure upon graduation, Chapter 219 provides an avenue for graduates of APRN programs awaiting full approval or accreditation to become licensed in the intervening time period.

The majority of the changes to the chapter are non-substantive, editorial changes that are necessary to remove outdated references, correct grammatical errors, and make conforming changes to the rule text for consistency with other Board rules. The changes to §§219.1, 219.2, 219.5, 219.7, and 219.10 - 219.12 include these types of changes.

The changes to §§219.3, 219.4, 219.6, and 219.9 are more substantive in nature, however.

First, the changes to §219.3 largely involve the requirements contained in subsection (a) and relate to the process for establishing a new APRN education program. Under the rule, the process for establishing a new APRN education program must be initiated by a letter of intent from the educational institution to the Board office. Further, the timeline for the development of the program proposal is limited to one year from the date of receipt of the initial proposal draft in the Board's offices. This is a slight departure from the current rule, which requires the program to initiate the process with the Board one year prior to the anticipated start of the program. The adopted rule also clarifies that the individual writing the proposal for the new APRN education program must be the proposed dean/director and must meet the chapter's qualifications for the dean/director position. This is a slight modification to the current requirements that a proposal must be completed under the direction or consultation of a nurse who meets the chapter's requirements for a program director. The changes to this subsection also make clear that the proposal fee is non-refundable. The rule further clarifies that a proposal without action for one calendar year will be considered withdrawn and a new proposal application and fee will be required to begin the new proposal process again. Finally, the rule provides that, if the Board denies a proposal, the educational institution must wait a minimum of twelve calendar months from the date of the denial before being able to submit a new proposal to the Board for consideration. These changes are necessary to conform the rule text to the Board's current practices in this regard. The remaining changes to subsections (b) and (c) clarify the existing rule text and are not intended to be substantive in nature.

The changes to §219.4 relate to the Board's approval of APRN education programs. First, §219.4(a) re-organizes the subsection to provide additional clarification regarding the approval status of an APRN education program. The subsection makes clear that the progressive designation of a program's approval status is based upon the program's performance and demonstrated compliance with the Board's requirements and responses to the Board's recommendations. A change from one approval status to another approval status will be based on survey visits and other factors specified in subsection (b) of the rule. Further, the rule clarifies that a program's initial approval will be granted once the program demonstrates compliance with the Board's requirements and recommendations, and the Board will determine the number of students that may be enrolled while the program is on initial approval.

The changes to §219.4(b) describe the process for changing a program's approval status. When a program has demonstrated non-compliance with the Board's requirements, the Board may change the program's status to full with warning or conditional status or withdraw the program's approval status altogether. Additionally, the Board may impose restrictions, conditions, or additional monitoring of the program. Board monitoring may include the submission of program reports, extended communication with program directors, or additional survey visits. The Board may also impose a monitoring plan, which could require the submission of quarterly reports of student's performance, remediation strategies, and attrition rates. In the event that Board monitoring is imposed upon a program, monitoring fees may also apply.

The remaining changes to subsections (c) and (d) update terminology throughout the rule text and are not intended to be substantive in nature.

The substantive changes to §219.6 involve the administration and organization of the APRN education program. First, the rule makes clear that, in colleges and universities, the APRN education program must have comparable status with other academic units within the governing institution in such areas as budgetary authority, rank, promotion, tenure, leave, benefits, and professional development. Further, salaries must be adequate to recruit, employ, and retain sufficiently qualified nursing faculty members with graduate preparation and expertise necessary for students to meet program goals. These parameters ensure that APRN programs have the necessary support from their administration to make the programs successful and to ensure the longevity of the program. While these requirements generally exist in the current text of the rule, the rule re-organizes these requirements within the section for additional clarity. The rule further clarifies that the dean/director of the program must have the authority necessary to direct the APRN education program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, dismissal of students, and enforcement of student policies. Finally, additional responsibilities may include verifying students' completion of program requirements and completing the NEPIS by the required dates. If there are changes in the name of the APRN program or the governing institution or in the contact information for the program, the dean/director must also notify the Board. These additional duties, clarified in the rule, are consistent with the expected duties of a nursing education program dean/director.

The changes to §219.9 relate to the program of study. In particular, the rule requires a program to include separate, graduate level academic courses in advanced pharmacotherapeutics, advanced health assessment, and advanced physiology and pathophysiology, which is consistent with the Board's current requirements for APRN licensure. Also consistent with these changes, the rule includes definitions for the terms advanced health assessment course, advanced pharmacotherapeutics course, and advanced physiology and pathophysiology course. The remaining changes to the section update terminology throughout the rule text and are not intended to be substantive in nature.

How the Sections Will Function.

Section 219.1 sets forth the requirement that APRN programs in Texas must be approved by the Board until the program becomes accredited or approved by a national APRN education accrediting body recognized by the Board. The section further specifies the types of APRN programs that may apply for approval in Texas.

Section 219.2 includes definitions for terms used throughout the chapter.

Section 219.3 outlines the requirements for initiating the process to establish a new APRN education program, the qualifications for the proposal's author, and the information to be included in the proposal. Further, the section specifies the timeline for program approval and the ramifications of a denied proposal. The section also specifies the information that must be provided to the Board when a program decides to close.

Section 219.4 discusses the approval status of programs and identifies reasons why a program's approval status may change.

Further, the section clarifies that, in addition to changing a program's approval status, the Board may impose restrictions, conditions, or a monitoring plan. The section also addresses survey visits and withdrawal of program approval.

Section 219.5 requires the philosophy/mission and objectives/outcomes of the APRN education program to be consistent with the philosophy/mission of the governing institution. Further, the section requires the dean/director and the faculty to periodically review the philosophy/mission and objectives/outcomes, consider student input as appropriate, and make necessary revisions to maintain currency.

Section 219.6 relates to the program's administration and organization. Specifically, the section requires an APRN education program to operate within or be affiliated with a college or university authorized to award graduate degrees. Further, the governing institution must be regionally accredited by an agency recognized by the Texas Higher Education Coordinating Board. The APRN education program must also have comparable status with other academic units within the governing institution in such areas as budgetary authority, rank, promotion, tenure, leave, benefits, and professional development, and salaries must be adequate to recruit, employ, and retain sufficient qualified nursing faculty members with graduate preparation and expertise necessary for students to meet program goals. Finally, the dean/director of the APRN education program must have the authority to direct the program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, dismissal of students, and enforcement of student policies.

Section 219.7 includes requirements for the APRN education program's faculty. Under §219.7, there must be written personnel policies for nursing faculty that are in keeping with accepted education standards and are consistent with those of the governing institution to the extent possible. Further, the APRN education program must employ sufficient faculty members with appropriate graduate preparation and expertise necessary to enable students to meet the program goals. Teaching assignments must be commensurate with the faculty member's education and experience as an APRN, and any faculty responsible for clinical management courses or involved in clinical teaching and supervision must be licensed as an APRN, generally have clinical practice experience as an APRN of at least two years, and maintain clinical practice within the APRN role and population focus.

Section 219.9 relates to the program of study. The program must be at least the equivalent of one academic year and the curriculum content must include concepts and principles critical to an APRN and knowledge and skills relevant to practice in the area of role and population focus. The curriculum must also include separate, graduate level courses in advanced pharmacotherapeutics, advanced health assessment, and advanced physiology and pathophysiology. The program of study must also include a minimum of 500 separate, non-duplicated clinical hours for each advanced role and population focus within the APRN education program.

Section 219.10 concerns the management of clinical learning experiences and resources. First, faculty must develop criteria for the selection of affiliating agencies/clinical facilities or clinical practice settings that address safety and the need for students to achieve the program outcomes (goals) through advanced practice registered nursing. When clinical preceptorships are used in an APRN education program, written agreements between the program, clinical preceptor and the affiliating agency/clinical fa-

cility, when applicable, must delineate the functions and responsibilities of the parties involved. Criteria for selecting clinical preceptors shall be developed in writing. Competent clinicians can be considered qualified to be preceptors if they are licensed to practice as an APRN or are a currently licensed health care professional who can provide supervision and teaching in clinical settings appropriate for advanced practice registered nursing.

Section 219.11 includes requirements for program facilities, resources, and services. The governing institution is responsible for providing services that support the effective development and implementation of the APRN education program. Further, the dean/director and faculty must have appropriate technology and support services, including secretarial and clerical assistance, appropriate to the needs of the program.

Finally, section 219.12 addresses records and reports. Accurate and current records must be maintained in a confidential manner and be accessible to appropriate parties.

Overall, the vast majority of the changes to these sections are non-substantive in nature, and re-organize the sections, update outdated references, and correct the use of certain terminology throughout the rule text. The few more substantive changes to §§219.3, 219.4, 219.6, and 219.9 have been previously addressed in greater detail in earlier portions of this adoption order.

Summary of Comments Received. The Board did not receive any comments on the proposal.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: None.

For, with changes: None.

Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151.

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

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 November 19, 2018.

TRD-201804967

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Effective date: December 9, 2018

Proposal publication date: October 12, 2018

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



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.2

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.2, Broker Responsibility, in Chapter 535, General Provisions, with a non-substantive change to the text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5643).

The amendments to §535.2 were recommended by the Commission appointed Broker Responsibility Working Group. The amendments require a broker to designate anyone who leads, supervises or directs a team in the brokerage to be a delegated supervisor. This will require that person to take a six hour broker responsibility course as part of their required continuing education for each renewal. The timeframe when a license holder must be delegated as a supervisor was shortened from six months to three consecutive months. A reference to a recently adopted advertising rule was added. The words "work files" were deleted and replaced with more specific items. A phrase was added to clarify the broker must ensure that a sponsored sales agent has geographic competence in the market area being served. A minimum criteria for training sales agents engaging in a brokerage activity for the first time was added. And, in recognition of digital communications, the timeframes for responding to clients, agents, other brokers, and the Commission were reduced to two and three days, respectively.

One written comment was received against the amendments as published stating the concepts were okay, but the language was too vague. The Commission respectfully disagrees with the commenter as the amendment language adds more specificity than currently exists. Several individuals gave oral comments stating that the addition of "communications with parties to the transaction" was too broad. The Commission agrees and added the word "substantive" before communications.

The revision to the rule as adopted does not change the nature or scope so much that it could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed rule.

The reasoned justification for the amendments is greater guidance for brokers as to their responsibilities to their sponsored agents and the public.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by these amendments are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§535.2. *Broker Responsibility.*

(a) A broker is required to notify a sponsored sales agent in writing of the scope of the sales agent's authorized activities under the Act. Unless such scope is limited or revoked in writing, a broker is responsible for the authorized acts of the broker's sales agents, but the broker is not required to supervise the sales agents directly. If a broker permits a sponsored sales agent to conduct activities beyond the scope explicitly authorized by the broker, those are acts for which the broker is responsible.

(b) A broker owes the highest fiduciary obligation to the principal and is obliged to convey to the principal all information known to the agent which may affect the principal's decision unless prohibited by other law.

(c) A broker is responsible for the proper handling of trust funds placed with the broker and must comply with §535.146 of this title.

(d) A broker is responsible for any property management activity by the broker's sponsored sales agent that requires a real estate license.

(e) A broker may delegate to another license holder the responsibility to assist in administering compliance with the Act and Rules, but the broker may not relinquish overall responsibility for the supervision of license holders sponsored by the broker. Any license holder who leads, supervises, directs, or manages a team must be delegated as a supervisor. Any such delegation must be in writing. A broker shall provide the name of each delegated supervisor to the Commission on a form or through the online process approved by the Commission within 30 days of any such delegation that has lasted or is anticipated to last more than three consecutive months. The broker shall notify the Commission in the same manner within 30 days after the delegation of a supervisor has ended. It is the responsibility of the broker associate or newly licensed broker to notify the Commission in writing when they are no longer associated with the broker or no longer act as a delegated supervisor.

(f) Listings and other agreements for real estate brokerage services must be solicited and accepted in a broker's name.

(g) A broker is responsible to ensure that a sponsored sales agent's advertising complies with §535.154 and §535.155 of this title.

(h) Except for records destroyed by an "Act of God" such as a natural disaster or fire not intentionally caused by the broker, the broker must, at a minimum, maintain the following records in a format that is readily available to the Commission for at least four years from the date of closing, termination of the contract, or end of a real estate transaction:

- (1) disclosures;
- (2) commission agreements such as listing agreements, buyer representation agreements, or other written agreements relied upon to claim compensation;
- (3) substantive communications with parties to the transaction;
- (4) offers, contracts and related addenda;
- (5) receipts and disbursements of compensation for services subject to the Act;
- (6) property management contracts;
- (7) appraisals, broker price opinions, and comparative market analyses; and
- (8) sponsorship agreements between the broker and sponsored sales agents.

(i) A broker who sponsors sales agents or is a designated broker for a business entity shall maintain, on a current basis, written policies and procedures to ensure that:

(1) Each sponsored sales agent is advised of the scope of the sales agent's authorized activities subject to the Act and is competent to conduct such activities, including competence in the geographic market area where the sales agent represents clients.

(2) Each sponsored sales agent maintains their license in active status at all times while they are engaging in activities subject to the Act.

(3) Any and all compensation paid to a sponsored sales agent for acts or services subject to the Act is paid by, through, or with the written consent of the sponsoring broker.

(4) Each sponsored sales agent is provided on a timely basis, before the effective date of the change, notice of any change to the Act, Rules, or Commission promulgated contract forms.

(5) In addition to completing statutory minimum continuing education requirements, each sponsored sales agent receives such additional educational instruction the broker may deem necessary to obtain and maintain, on a current basis, competency in the scope of the sponsored sales agent's practice subject to the Act. At a minimum, when a sales agent performs a real estate brokerage activity for the first time, the broker must require that the sales agent receive coaching and assistance from an experienced license holder competent for that activity.

(6) Each sponsored sales agent complies with the Commission's advertising rules.

(7) All trust accounts, including but not limited to property management trust accounts, and other funds received from consumers are maintained by the broker with appropriate controls in compliance with §535.146.

(8) Records are properly maintained pursuant to subsection (h) of this section.

(j) A broker or supervisor delegated under subsection (e) of this section must respond to sponsored sales agents, clients, and license holders representing other parties in real estate transactions within two calendar days.

(k) A sponsoring broker or supervisor delegated under subsection (e) of this section shall deliver mail and other correspondence from the Commission to their sponsored sales agents within three calendar days after receipt.

(l) When the broker is a business entity, the designated broker is the person responsible for the broker responsibilities under this section.

(m) This section is not meant to create or require an employer/employee relationship between a broker and a sponsored sales agent.

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 November 19, 2018.

TRD-201804974

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Effective date: December 9, 2018
Proposal publication date: August 31, 2018
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SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §§535.50, 535.53, 535.55

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.50, Definitions, §535.53, Business Entity; Designated Broker, and §535.55, Education and Sponsorship Requirements for a Sales Agent License, in Chapter 535, General Provisions, without changes to the text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5644). The adopted amendments will not be republished.

The amendments to Subchapter E are made as a result of the Commission's quadrennial rule review. The amendments delete or revise outdated or misplaced definitions and correct references to the Commission's Real Estate Recovery Trust Accounts and subchapter references.

No comments were received on the amendments as published.

The reasoned justification for the amendments is updating the rule to remove outdated definitions and to make it easier to follow and use.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by these amendments are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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 November 19, 2018.

TRD-201804976
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: December 9, 2018
Proposal publication date: August 31, 2018
For further information, please call: (512) 936-3092



SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §§535.60, 535.62, 535.65

The Texas Real Estate Commission (TREC) adopts amendments to Chapter 535, General Provisions, 22 TAC §535.60, Definitions, §535.62, Approval of Qualifying Courses, and §535.65, Responsibilities and Operations of Providers of Qualifying Courses, with non-substantive typographical changes to the text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5646). The rules will be republished.

The revision to the rules as adopted does not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed rules.

The amendments to Subchapter F were made as a result of the Commission's quadrennial rule review. The amendments to §535.60 deleted unnecessary or outdated definitions and added or clarified definitions applicable to this Subchapter. The amendments to §535.62 set out the requirements for course approval in greater detail for better understanding and compliance. The amendments to §535.65 rearranged and clarified some of the items of responsibilities of providers to increase comprehension and compliance.

The reasoned justification for the amendments is to provide greater detail in the rules for better understanding and compliance.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§535.60. Definitions.

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

(1) Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(2) Distance Education delivery--A method of course delivery other than classroom delivery, including online and correspondence delivery.

(3) Combination delivery--A combination of classroom and distance education where at least 50% of the course is offered through classroom delivery.

(4) Instructor--A person approved by the Commission to teach qualifying courses.

(5) Legal Update Courses--required courses created for and approved by the Texas Real Estate Commission to satisfy the eight hours of continuing education required by §1101.455 of the Act.

(6) Mandatory qualifying course--A qualifying course that an applicant is required to take to fulfill licensing requirements as mandated by §1101.358 of the Act.

(7) Other qualifying course--A qualifying course, other than a mandatory qualifying course, for which the subject matter of the course is specified by the Act or Commission rule, that an applicant is required to take to fulfill licensing requirements.

(8) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(9) Provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, or Commission rule; that offers a course for which qualifying credit may be granted by the Commission to a license holder or applicant.

(10) Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the Commission.

(11) Scenario-based learning--The use of scenarios to support active learning strategies such as problem-based or case-based learning where students must apply their subject knowledge, critical thinking and problem solving skills in a real-world context.

(12) Topic--Subject matter that must be covered in a specific course as defined by the Act, Chapter 1102 and this chapter.

(13) Unit--A subtopic that must be covered within a topic.

§535.62. *Approval of Qualifying Courses.*

(a) Application for approval of a qualifying course.

(1) For each qualifying course a provider intends to offer, the provider must:

(A) submit the course application and course approval forms, including all materials required; and

(B) pay the fee required by §535.101 or §535.210 of this title.

(2) A provider may file a single application for a qualifying course offered through multiple delivery methods. A fee is required for content and examination review of each qualifying course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved qualifying course must submit a new application and pay all required fees, including a fee for content and examination review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application;

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request; and

(C) prior to approval of a proposed qualifying real estate inspector course, submit the course to the Texas Real Estate Inspector Committee for review and recommendation.

(b) Standards for course approval. To be approved as a qualifying course by the Commission, a provider must satisfy the Commission that the course:

(1) covers all topics and units for the course subject required by the Act, Chapter 1102 and this chapter;

(2) covers all units within the prescribed topic;

(3) contains sufficient content to satisfy the number of hours for which credit is being requested as evidenced by:

(A) word count studies;

(B) samples of student time studies; or

(C) other methods acceptable to the Commission;

(4) will be scheduled for the full clock hours of time for which credit is awarded and presented in full hourly units;

(5) does not have daily course segments that exceed 12 hours;

(6) will be delivered by one of the following delivery methods:

(A) classroom delivery;

(B) distance education delivery; or

(C) a combination of (A) and (B) of this paragraph, if at least 50% of the combined course is offered by classroom delivery;

(7) include at a minimum, the following methods to assess a student's comprehension of the course material:

(A) topic quizzes, with at least three questions related to the subject matter in each course topic;

(B) at least one scenario-based learning exercise per every increment of 10 credit hours or less; and

(C) if the course is delivered by distance education delivery:

(i) prevent the student from moving from one topic to the next topic until the student answers all topic quiz questions correctly and receives a passing grade on the scenario based learning exercises; and

(ii) for quiz questions answered incorrectly, employ a method to present the rationale behind the correct answer and ask a subsequent related quiz question that will count toward passing the topic if answered correctly; and

(8) include at least four versions of a final examination, and ensure that each version of the examination:

(A) covers each topic required by the Act or Rules for the specific course;

(B) does not contain any true/false questions;

(C) does not repeat more than one third of the questions from other versions of the final examination;

(D) for all qualifying courses other than a real estate math course:

(i) consists of at least two questions per credit course hour; and

(ii) draws from a question bank consisting of at least four questions per credit course hour; and

(E) for all qualifying real estate math courses, consists of at least 20 questions that are drawn from a question bank consisting of at least 40 questions.

(c) If the course is currently certified by a distance learning certification center acceptable to the Commission, the provider will be deemed to have met requirements for verification of clock/course hours for distance education delivery.

(d) Approval of currently approved courses by a secondary provider.

(1) If a secondary provider wants to offer a course currently approved for another provider, the secondary provider must:

(A) submit the course application and approval forms including all materials required;

(B) submit written authorization to the Commission from the owner of the rights to the course material granting permission for the secondary provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the previously approved course, the secondary provider is required to:

(A) offer the course as originally approved, assume the original expiration date, include any approved revisions, use all materials required for the course; and

(B) meet the requirements of §535.65 of this title.

(e) Required revision of a currently approved qualifying course.

(1) Providers are responsible for keeping current on changes to the Act and Commission Rules and must revise or supplement materials for approved courses when changes are adopted on or before the effective date of those statutes or rules.

(2) If the Commission adopts new requirements for a course, including but not limited to a course approval form that divides selected qualifying course subjects into topics and units, the Commission will determine, at the time the Commission adopts the new requirements, whether a provider must revise the course or supplement the course. Any provider currently offering a course that is subject to change must:

(A) revise or supplement any currently approved classroom qualifying course covering that subject no later than 12 months after the effective date of the new requirements; and

(B) revise or supplement any currently approved qualifying course offered by distance or combination delivery no later than 15 months after the effective date of the new requirements.

(3) If the Commission determines that a qualifying course should be supplemented, a provider must submit the supplemental materials required by the Commission. No fee will be required and the course will maintain its original expiration date.

(4) If the Commission determines that a qualifying course should be revised, a provider must:

(A) submit the course application and approval forms including all materials required; and

(B) pay the fee required by §535.101 or §535.210 of this title.

(5) A provider may not offer a course for qualifying credit after the deadlines established by this subsection following a required revision or supplement if the provider has not received written approval from the Commission to offer the revised or supplemented course.

(6) If a provider paid a fee for the initial course approval, the provider will receive a prorated credit on the fee paid under this subsection for a revised course for the unexpired time remaining on that initial approval. The Commission will calculate the prorated credit by dividing the fee paid for the initial approval by 48 months and multi-

plying that amount by the number of full months remaining between the approval date of the revised course and the expiration date of the currently approved version of the course.

(7) A revised course approved under this subsection expires four years from the date of approval of the revision.

(8) No later than 90 days before the effective date of a revised or supplemented course, a provider shall send written notice to all students who have purchased the currently approved course and not completed it, that credit will no longer be given for the current course as of the effective date of the revised or supplemented course.

(9) If an approved provider fails to give the notice set out in paragraph (8) of this subsection, the provider shall allow the student to take the revised or supplemented course at no additional charge.

(f) Voluntary revision of a currently approved qualifying course.

(1) A provider who voluntarily revises a currently approved course, shall, prior to implementation of any course materials:

(A) file any updated course materials and revisions of the course outline with the Commission; and

(B) pay the fee required by §535.101 and §535.210 of this title.

(2) If after review the Commission is not satisfied with the updated course materials and revised course outline, the Commission may direct a provider to:

(A) further revise the materials;

(B) cease use of materials; or

(C) withdraw a course text.

(3) If a provider paid a fee for the initial course approval, the provider will receive a prorated credit on the fee paid under this subsection for the unexpired time remaining on that initial approval. The Commission will calculate the prorated credit by dividing the fee paid for the initial approval by 48 months and multiplying that amount by the number of full months remaining between the approval date of the revised course and the expiration date of the currently approved version of the course.

(4) A revised course approved under this subsection expires four years from the date of approval of the revision.

(5) No later than 90 days before the effective date of a revised course, a provider shall send written notice to all students who have purchased the currently approved course and not completed it, that credit will no longer be given for the current course as of the effective date of the revised course.

(6) If an approved provider fails to give the notice set out in paragraph (5) of this subsection, the provider shall allow the student to take the revised course at no additional charge.

(g) Approval and Expiration of approval.

(1) A Qualifying provider shall not offer qualifying education courses until the provider has received written notice of the approval from the Commission.

(2) A Qualifying course expires four years from the date of approval and providers must reapply and meet all current requirements of this Section to offer the course for another four years.

(3) Courses approved for use by a subsequent provider under subsection (d) of this section expire on the same date that the originally approved course expires.

(h) Renewal of course approval.

(1) Not earlier than 90 days before the expiration of a course approval, a provider may apply for a renewal of course approval for another four-year period.

(2) Approval of an application to renew course approval shall be subject to the standards for initial approval set out in this section.

(i) Course preapproval for exempt providers.

(1) Providers exempt from approval by the Commission may submit courses to the Commission for preapproval by meeting the standards for course approval under this section, including submitting all applicable forms and fees.

(2) Any course offered by an exempt provider without preapproval by the Commission will be evaluated by the Commission to determine whether it qualifies for credit at such time as a student submits a course completion certificate to the Commission for credit.

(3) The Commission will determine whether or not a course offered by an exempt provider without preapproval by the Commission qualifies for credit using the standards set out under this section.

(4) An exempt provider may not represent that a course qualifies for credit by the Commission unless the exempt provider receives written confirmation from the Commission that the course has been preapproved for credit.

§535.65. *Responsibilities and Operations of Providers of Qualifying Courses.*

(a) Responsibility of Providers.

(1) A provider is responsible for:

(A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;

(B) maintaining student attendance records and pre-enrollment agreements;

(C) verifying instructor qualification, performance and attendance;

(D) proper examination administration;

(E) validation of student identity acceptable to the Commission;

(F) maintaining student course completion records;

(G) ensuring all advertising complies with subsection (c) of this section;

(H) ensuring that instructors or other persons do not recruit or solicit prospective sales agents, brokers or inspectors during course presentation; and

(I) ensuring staff is reasonably available for public inquiry and assistance.

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas for the duration of the provider's ap-

proval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) Use of approved Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently approved by the Commission to teach the specified course.

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor.

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection.

(4) An instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval.

(5) A provider may use the services of a guest instructor who is not approved as an instructor by the Commission for qualifying real estate or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

(A) using any advertising which does not clearly and conspicuously contain the provider's name on the first page or screen of the advertising;

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program;

(E) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression;

(F) advertising a course under a course name other than the course name approved by the Commission; or

(G) advertising using a name that implies the course provider is the Texas Real Estate Commission, including use of the acronym "TREC", in all or part of the course provider's name.

(2) Any written advertisement by a provider that includes a fee that the provider charges for a course must display any additional fees that the provider charges for the course in the same place in the advertisement and with the same degree of prominence.

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(4) The provider is responsible for and subject to sanctions for any violation of this subsection by any affiliate or other third party marketer or web hosting site associated with or used by the provider.

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

(A) the tuition for the course;

(B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;

(C) the provider's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(D) the attendance requirements;

(E) the acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions;

(F) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits; and

(G) the notices regarding potential ineligibility for a license based on criminal history required by Section 53.152, Texas Occupations Code.

(2) A pre-enrollment agreement must be signed by a representative of the provider and the student.

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider shall inform the Commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(4) If a provider fails to give the notice required by subsection (d)(1)(G), and an individual's application for a license is denied by the Commission because the individual has been convicted of a criminal offense, the provider shall reimburse the individual the amounts required by Section 53.153, Texas Occupations Code.

(f) Course materials.

(1) Before the course starts, a provider shall give each student copies of or, if a student has online access, provide online access to any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this title.

(g) Presentation of courses.

(1) Classroom Delivery:

(A) The location for the course must be:

(i) conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;

(ii) adequate for the class size;

(iii) pose no threat to the health or safety of students; and

(iv) allow the instructor to see and hear each student and the students to see and hear the instructor, including when offered through the use of technology.

(B) The provider must:

(i) check the photo identification of each student at class sign up and when signing in for each subsequent meeting of the class;

(ii) ensure the student is present for the course for the hours of time for which credit is awarded;

(iii) provide a 10 minute break per hour at least every two hours; and

(iv) not have daily course segments that exceed 12 hours.

(C) If the course is a qualifying or non-elective continuing education course delivered through the use of technology and there are more than 20 students registered for the course, the provider will also use:

(i) a monitor at the broadcast origination site to verify identification of each student, monitor active participation of each student and facilitate questions for the instructor; and

(ii) a proctor at each remote site with more than 20 students to verify identification of each student, monitor active participation of each student and proctor any on-site examination.

(D) Makeup Session for Classroom Courses.

(i) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(ii) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(I) attendance in corresponding class sessions in a subsequent offering of the same course; or

(II) the supervised presentation by audio or video recording of the class sessions actually missed.

(iii) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(iv) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall automatically be dropped from the course with no credit.

(2) Distance Education Delivery. The provider must ensure that:

(A) the student taking all topics of the course and completing all quizzes and exercises is the student receiving credit for the course through a student identity verification process acceptable to the Commission;

(B) an approved instructor is available to answer students' questions or provide assistance as necessary in a timely manner;

(C) a student has completed all instructional modules and attended any hours of live instruction required for a given course; and

(D) an approved instructor is responsible for providing answers and rationale for the grading of the written course work.

(3) A provider is not required to present topics in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

(h) Course examinations.

(1) The final examination given at the end of each course must be given in the manner submitted to and approved by the Commission. All final examinations must be closed book.

(2) Final examination questions must be kept confidential and be significantly different from any quiz questions and exercises used in the course.

(3) A provider shall not permit a student to view or take a final examination before the completion of regular course work and any makeup sessions required by this section.

(4) A provider must rotate all versions of the examination required by §535.62(b)(7) throughout the approval period for a course in a manner acceptable to the Commission and examinations must:

(A) require an unweighted passing score of 70%; and

(B) be proctored by a member of the provider faculty or staff, or third party proctor acceptable to the Commission, who:

(i) is present at the test site or able to monitor the student through the use of technology acceptable to the Commission; and

(ii) has positively identified that the student taking the examination is the student registered for and who took the course.

(5) The following are examples of acceptable third party proctors:

(A) employees at official testing or learning/tutoring centers;

(B) librarians at a school, university, or public library;

(C) college or university administrators, faculty, or academic advisors;

(D) clergy who are affiliated with a specific temple, synagogue, mosque, or church; and

(E) educational officers of a military installation or correctional facility.

(6) A provider may not give credit to a student who fails a final examination and a subsequent final examination as provided for in subsection (i) of this section.

(i) Subsequent final course examination.

(1) If a student fails a final course examination, a provider may permit the student to take a subsequent final examination only after the student has:

(A) waited at least three calendar days; and

(B) completed any additional course work prescribed by the provider.

(2) A student shall complete the subsequent final examination no later than the 90th day after the date the original class concludes. The subsequent final examination must be a different version

of the original final examination given to the student and must comply with §535.62(b)(1)(G) and subsection (h) of this section.

(3) If a student fails to timely complete the subsequent final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.

(4) A student who fails the final course examination a second time is required to retake the course and the final course examination.

(j) Course completion certificate.

(1) Upon successful completion of a qualifying course, a provider shall issue a course completion certificate that a student can submit to the Commission. The course completion certificate shall show:

(A) the provider's name and approval number;

(B) the instructor's name and instructor license number assigned by the Commission;

(C) the course title;

(D) course numbers;

(E) the number of classroom credit hours;

(F) the course delivery method;

(G) the dates the student began and completed the course; and

(H) printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(k) Instructor and course evaluations.

(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation form and provide a link to an online version of the form that a student can complete and submit any time after course completion.

(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.

(3) When evaluating an instructor or course, a provider shall use all of the questions from the evaluation form approved by the Commission, in the same order as listed on that form. A provider may add additional questions to the end of the Commission evaluation questions or request the students to also complete the provider's evaluation form.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(l) Maintenance of records for a provider of qualifying courses.

(1) A provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) A provider shall maintain financial records sufficient to reflect at any time the financial condition of the school.

(3) A school's financial statement and balance sheets must be available for audit by Commission staff, and the Commission may require presentation of financial statements or other financial records.

(4) All records may be maintained electronically but must be in a common format that is legible and easily printed or viewed without additional manipulation or special software.

(m) Changes in Ownership or Operation of an approved provider of qualifying courses.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operations of the provider by submitting the Qualifying Education Provider Supplement Application, including but not limited to changes in:

(A) Operations or records management; and

(B) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide all of the following information or documents to the Commission:

(A) an Education Provider Application reflecting all required information for each owner and the required fee;

(B) a Principal Information Form for each proposed new owner who holds at least 10% interest in the school;

(C) financial documents to satisfy standards imposed by §535.61 of this title, including a \$20,000 surety bond for the proposed new owner; and

(D) business documentation reflecting the change.

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 November 19, 2018.

TRD-201804977

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Effective date: December 9, 2018

Proposal publication date: August 31, 2018

For further information, please call: (512) 936-3092



SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §§535.70, 535.72, 535.75

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.70, Definitions; §535.72, Approval of

Non-elective Continuing Education Courses; and §535.75, Responsibilities and Operations of Continuing Education Providers, in Chapter 535, General Provisions as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5652). Rules §535.70 and §535.75 are adopted without changes and will not be republished. Rule §535.72 is adopted with non-substantive changes and will be republished.

The amendments to Subchapter G are made as a result of the Commission's quadrennial rule review. The amendments delete unnecessary or outdated definitions and add or clarify definitions applicable to this Subchapter. In addition, the term "subsequent provider" was changed to "secondary provider" to align the term with the one used more regularly in the education industry. The amendments also add clarifying terms and correct a subchapter reference.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to update the rule for better understanding and compliance.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§535.72. *Approval of Non-elective Continuing Education Courses.*

(a) General requirements.

(1) The non-elective continuing education courses must be conducted as prescribed by the rules in this Subchapter.

(2) Elective continuing education courses are approved and regulated under §535.73 of this subchapter.

(b) Application for approval to offer non-elective real estate or inspector CE courses.

(1) A CE provider seeking to offer a specific non-elective real estate or inspector CE course as outlined in this section shall:

(A) for a non-elective real estate course:

(i) submit a Real Estate Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.101 of this title; and

(B) for a non-elective real estate inspection course:

(i) submit an Inspector Non-Elective Continuing Education CE Course Application to the Commission; and

(ii) pay the fee required by §535.210 of this title.

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application, and pay all required fees, including a fee for content review.

(4) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Commission approval of non-elective course materials. Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective continuing education courses:

(1) a four-hour Legal Update I: Laws, Rules and Forms course;

(2) a four-hour Legal Update II: Agency, Ethics and Hot Topics course;

(3) a six-hour Broker Responsibility course; and

(4) a four-hour Inspector Legal and Ethics course.

(d) Course expiration.

(1) Each legal update course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) Each Inspector Legal and Ethics course expires on August 31 of each odd-numbered year.

(e) Instructors. A CE provider must use:

(1) For non-elective real estate CE courses, an approved instructor who has been certified as required under §535.74 of this title; and

(2) For non-elective inspector CE courses, an approved instructor who has been approved as required under §535.74 of this title.

(f) Delivery method. Non-elective CE courses must be delivered by one of the following delivery methods:

(1) classroom delivery;

(2) distance education delivery; or

(3) a combination of (1) and (2) of this subsection if at least 50% of the combined course is offered by classroom delivery.

(g) Except as provided in this section, non-elective CE courses must meet the presentation requirements of §535.65(g) of this title.

(1) Classroom Delivery. The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter.

(2) Distance Education Delivery.

(A) Non-elective real estate courses are designed by the Commission for interactive classroom delivery. Acceptable demonstration of a method to engage distance education delivery students in interactive discussions and group activities, as well as additional material to meet the course objectives and time requirements are required for approval.

(B) The provider must submit a course completion roster in accordance with §535.75(d) of this subchapter.

(h) Course examinations.

(1) A provider must administer a final examination promulgated by the Commission for non-elective CE courses as follows:

(A) For classroom delivery, the examination will be given as a part of class instruction time with each student answering the examination questions independently followed by a review of the correct answers by the instructor. There is no minimum passing grade required to receive credit.

(B) For distance education delivery, the examination will be given after completion of regular course work and must be:

(i) proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(h)(5) of this title, who is present at the test site and has positively identified that the student taking the examination is the student registered for and who took the course; or

(ii) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student registered for and who took the course; and

(iii) graded with a pass rate of 70% in order for a student to receive credit for the course; and

(iv) kept confidential.

(2) A provider may not give credit to a student who fails a final examination and subsequent final examination as provided for in subsection (j) of this section.

(i) Subsequent final course examination.

(1) If a student fails a final course examination, a provider may permit the student to take one subsequent final examination.

(2) A student shall complete the subsequent final examination no later than the 30th day after the date the original class concludes. The subsequent final examination must be different from the first examination.

(3) A student who fails the subsequent final course examination is required to retake the course and the final course examination.

(j) Approval of currently approved courses by a secondary provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that secondary provider must:

(A) submit the CE course application supplement form(s);

(B) submit written authorization to the Commission from the author or provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the secondary provider is required to:

(A) offer the course as originally approved, assume the original expiration date, include any approved revisions, use all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(k) Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(l) Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to

the Act and Commission Rules and must supplement materials for approved non-elective CE courses to present the current version of all applicable statutes and rules on or before the effective date of those statutes or 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 November 19, 2018.

TRD-201804980

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Texas Real Estate Commission

Effective date: December 9, 2018

Proposal publication date: August 31, 2018

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SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.101, Fees, in Chapter 535, General Provisions, with changes to the text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5654). The amended rule will be republished.

The amendment to §535.101 reduces the fee paid by a broker or sales agent from \$20 to \$10 each time a sales agent establishes or changes sponsorship. This change is recommended by the Commission as part of its FY2019 budget approval. Each year that revenues exceed expenses, after projecting the next year's revenues and expenses and meeting the requirements for fiscally responsible operational reserves, the agency has a standing policy of considering whether a reduction in fees is appropriate. As it has done in prior years, the Commission has determined that it is fiscally sound to lower this fee to reduce one cost of doing business for license holders.

No comments were received on the amendments as published. However, the Commission has developed a free online license history certificate, so the rule was revised to take out the charge for that item.

The revision to the rule as adopted does not change the nature or scope so much that it could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed rule.

The reasoned justification for the amendments is reduce fees charged to license holders when establishing or changing sponsors or seeking a license history certificate.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§535.101. Fees.

(a) The Commission shall charge and collect the following fees:

(1) a fee of \$150 for filing an original or reinstatement application for a real estate broker license, which includes a fee for transcript evaluation;

(2) a fee of \$72 for the timely renewal of a real estate broker license;

(3) a fee of \$120 for filing an application to step down from a real estate broker license to a real estate sales agent license;

(4) a fee of \$150 for filing an original or reinstatement application for a real estate sales agent license, which includes a fee for transcript evaluation;

(5) a fee of \$66 for the timely renewal of a real estate sales agent license;

(6) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(7) a fee equal to 2 times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(8) a fee of \$50 for filing a request for, or renewal of, a license for each additional office or place of business for a period of two years;

(9) the fee charged by an examination provider pursuant to a contract with the Commission for taking a license examination;

(10) a fee of \$10 for deposit into the real estate recovery trust account upon the filing of an original sales agent or broker application;

(11) a fee of \$10 to establish or change a relationship with a sponsoring broker;

(12) a fee of \$20 for filing a request for a license certificate due to a change of place of business or a change of a license holder name:

(A) A change of address or name submitted with an application to renew a license, however, does not require payment of a fee in addition to the fee for renewing the license.

(B) The Commission may require written proof of a license holder's right to use a different name before issuing a license certificate reflecting a change of name.

(13) a fee of \$50 to request an inactive broker license be returned to active status;

(14) a fee of \$40 for preparing a certificate of active licensure or sponsorship;

(15) a fee of \$50 for filing a moral character determination;

(16) a fee of \$400 for filing an application for accreditation of a qualifying education program for a period of four years;

(17) after initial approval of accreditation, a fee of \$200 a year for operation of a qualifying real estate education program;

(18) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each qualifying education course for a period of four years:

(A) \$10 for content and examination review;

(B) \$10 for classroom delivery design and presentation review; and

(C) \$20 for distance education delivery design and presentation review;

(19) a fee of \$400 for filing an application for accreditation as a Continuing Education provider for a period of two years;

(20) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each continuing education course for a period of two years:

(A) \$5 for content and examination review;

(B) \$5 for classroom delivery design and presentation review; and

(C) \$10 for distance education delivery design and presentation review;

(21) the fee required under paragraphs (18)(C) and (20)(C) will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission;

(22) a fee of \$150 for filing an application for approval as an instructor for a two-year period for real estate qualifying or continuing education courses;

(23) the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application or renewal;

(24) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(25) a continuing education deferral fee of \$200;

(26) a late reporting fee of \$250 to reactivate a license under §535.93 of this title;

(27) a fee of \$30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored or reversed;

(28) a fee of \$20 for filing any application, renewal, change request, or other record on paper that a person may otherwise file with the Commission electronically by accessing the Commission's website, entering the required information online, and paying the appropriate fee; and

(29) a fee of \$20 per certification when providing certified copies of documents.

(b) Fees established by this section must be paid when an application is filed and are not refundable once an application has been accepted for filing.

(c) If the Commission receives an application that requires payment of a fee, and a sufficient fee was not submitted with the application, the Commission will return the application and notify the person filing the application that the person must pay the fee before the application will be processed.

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 November 19, 2018.

TRD-201804981

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Effective date: March 1, 2019

Proposal publication date: August 31, 2018

For further information, please call: (512) 936-3092

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**SUBCHAPTER Q. ADMINISTRATIVE
PENALTIES**

22 TAC §535.191

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions, without changes to the text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5656). The amended rule text will not be republished.

The amendments to §535.191 are made as a result of the Commission's quadrennial rule review. The amendments move several violations to a lower tier of penalties and add several violations that are new or were missing from the penalty matrix.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to have a complete schedule of penalty matrix and to lower the amount of penalties for several violations to more accurately reflect the severity of those violations.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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 November 19, 2018.

TRD-201804983

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Effective date: December 9, 2018

Proposal publication date: August 31, 2018

For further information, please call: (512) 936-3092

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**SUBCHAPTER R. REAL ESTATE
INSPECTORS**

22 TAC §535.223

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.223, Standard Inspection Report Form,

in Subchapter R, Real Estate Inspectors, without changes to the text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5657). The amended rule text will not be republished.

The amendments to §535.223, Standard Inspection Report Form, would allow inspectors to remove the TREC logo or substitute an inspector's logo in place of the TREC logo on the standard inspection report form. The amendments are recommended by the Texas Real Estate Inspector Committee.

The reasoned justification for the amendments is to provide identification flexibility to inspectors when using the standard form.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this amendment is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the amendments.

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 November 19, 2018.

TRD-201804984

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Effective date: December 9, 2018

Proposal publication date: August 31, 2018

For further information, please call: (512) 936-3092



CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.45, 535.47, 535.56

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.45, Standard Contract Form TREC No. 38-5, §537.47, Standard Contract Form TREC No. 40-7, and §537.56, Standard Contract Form TREC No. 49-0 in Chapter 537, Professional Agreements and Standard Contracts, without changes to the rule text but with non-substantive clarifying changes to the forms adopted by reference in §537.45 and §537.56, as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5662). The rule text and forms will not be republished.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted and recommended for adoption by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor.

The Broker Lawyer Committee (Committee) recommended revisions to the contract addenda forms adopted by reference under the rules set out in Chapter 537. The revisions to the Notice of Buyer's Termination of Contract adds a requirement to include lender's written notice setting forth the reasons Property Approval was not obtained when terminating the contract for that reason. A new and an existing item that grant buyer termination rights under the contracts or addenda, and new notice language were also added.

Two comments were received on §535.47 (Notice of Buyer's Termination of Contract) following publication. One stated that it was unfair to the buyer who could not require the lender to provide documentation when the loan was denied due to the property condition. The Committee disagreed with this position, as most lenders already provide the buyer with some type of documentation when property approval is denied. The other wanted the identifier portion "between buyer and seller" removed and objected to the note regarding termination not being an election of remedies. The Committee disagreed with both points since the first item is used solely to identify the contract, not bind the parties, and the second item simply references the parties back to the terms of the contract, which will control the parties' rights on termination. The Committee did make a few non-substantive changes to the language of the form for better clarity.

The Committee rewrote Paragraph 2B, Property Approval, to clarify the intent of the paragraph and to include a timeframe for buyer to give seller notice and evidence of the lender's determination. The Committee also recommended a few clarifying revisions to the Third Party Financing Addendum and reformatted it so that it was consistent with other Commission promulgated addenda and changed the last sentence of Paragraph 5B so that it states "brokers and sales agents provided under Broker Information."

The Committee revised the Addendum Concerning Right to Terminate Due to Lender's Appraisal to improve understanding and use of the form after receiving comments that it was hard to understand.

The revisions to the adopted forms do not change the nature or scope so much that they could be deemed different forms. The adopted forms do not affect individuals other than those contemplated by the rule/forms adopted by reference as proposed. The adopted forms do not impose more onerous requirements than the proposed forms.

The reasoned justification for the amendments is to update the reasons on the form for a buyer to give notice of termination of a contract, to clarify how lender property approval affects a contract, and to improve understanding and use of the appraisal contingency addendum.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

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 November 19, 2018.

TRD-201804986

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Effective date: March 1, 2019

Proposal publication date: August 31, 2018

For further information, please call: (512) 936-3092

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

37 TAC §§651.5 - 651.7

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §§651.5 - 651.7, concerning Forensic Disciplines, to harmonize rule language in its forensic analyst licensing and laboratory accreditation programs. The amendments are adopted without changes to the rule text as proposed in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7095) and will not be republished.

The rules as adopted make no substantive changes to the Commission's forensic analyst licensing and laboratory accreditation programs, but implement consistent language to harmonize the rules in each program. The amendments are necessary to reflect adoptions made by the Commission at its October 5, 2018, quarterly meeting. The amendments are made in accordance with the Commission's laboratory accreditation and forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Tex. Code Crim. Proc. art 38.01.

Cross reference to statute. The adoption affects 37 TAC §§651.5, 651.6, and 651.7.

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 November 26, 2018.

TRD-201805003

Leigh Savage

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Texas Forensic Science Commission

Effective date: December 16, 2018

Proposal publication date: October 26, 2018

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SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.205

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §651.205, concerning Forensic Disciplines Exempt from the Commission Licensing Requirement by Administrative Rule, with changes to the proposed rule text as published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7097). The adopted rule text is republished below.

The rule as adopted makes no substantive changes to the Commission's forensic analyst licensing and laboratory accreditation programs, but implements consistent language to harmonize the rules in each program. The amendments are necessary to reflect adoptions made by the Commission at its October 5, 2018, quarterly meeting. The amendments are made in accordance with the Commission's laboratory accreditation and forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendment is adopted under Tex. Code Crim. Proc. art 38.01.

Cross reference to statute. The adoption affects 37 TAC §651.205.

§651.205. Forensic Disciplines Exempt from the Commission Licensing Requirement by Administrative Rule.

The Commission has exempted certain forensic disciplines from the accreditation requirement by administrative rule under §651.7 of this title and thus the licensing requirement does not apply to these forensic disciplines.

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 November 26, 2018.

TRD-201805002

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Effective date: December 16, 2018

Proposal publication date: October 26, 2018

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37 TAC §651.206

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §651.206, concerning Exemptions from Commission Licensing Requirement for Support Personnel and Previously Employed Forensic Analysts, without changes to the proposed rule text as published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7098). The amended rule will not be republished.

The adopted amendments add an exemption from licensing requirements for forensic analysts who no longer perform foren-

sic analysis for a Texas-accredited laboratory, but return for the limited purpose of providing testimony and related analysis in a court proceeding regarding analytical work performed prior to the effective date of the forensic analyst licensing requirement -- January 1, 2019. The amendments are necessary to reflect adoptions made by the Commission at its October 5, 2018, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendment is adopted under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The adoption affects 37 TAC §651.206.

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 November 26, 2018.

TRD-201805004

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Effective date: December 16, 2018

Proposal publication date: October 26, 2018

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37 TAC §651.207

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §651.207, concerning Forensic Analyst License Requirements Including License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration, without changes to the text as proposed in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7099). The adopted rule will not be republished.

The adopted amendments remove the requirement for forensic analyst license applicants to possess Knowledge-based Competency Minimum Training Subject Area Requirements in order to obtain a forensic analyst license. The amended rule also sets the fee for a laboratory wishing to apply for a blanket license.

The amendments are necessary to reflect adoptions made by the Commission at its October 5, 2018, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Tex. Code Crim. Proc. art. 38.01§4-a.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendment is adopted under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The adoption affects 37 TAC §651.207.

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 November 26, 2018.

TRD-201805007

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Effective date: December 16, 2018

Proposal publication date: October 26, 2018

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37 TAC §651.208

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §651.208, concerning Forensic Analyst License Renewal, without changes to the text as published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7103). The rule text will not be republished.

The adopted amendments add details with respect to continuing education requirements to its forensic analyst licensing program. The amendments are necessary to reflect adoptions made by the Commission at its October 5, 2018, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendment is adopted under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The adoption affects 37 TAC §651.208.

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 November 26, 2018.

TRD-201805001

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Effective date: December 16, 2018

Proposal publication date: October 26, 2018

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37 TAC §651.213

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 TAC §651.213, concerning Licensing of Military Service Members, Military Veterans, and Military Spouses, without changes to the proposed text as published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7105). The adopted amendments will not be republished.

The amendments provide a waiver from licensing fees for military service members, military veterans, and military spouses. The amendments are necessary to reflect adoptions made by the Commission at its October 5, 2018, quarterly meeting. The amendments are made in accordance with the Commission's

forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendment is adopted under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The adoption affects 37 TAC §651.213.

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 November 26, 2018.

TRD-201805000
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Effective date: December 16, 2018
Proposal publication date: October 26, 2018
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37 TAC §651.220

The Texas Forensic Science Commission ("Commission") adopts new rule 37 TAC §651.220, concerning Blanket License for Out-of-State Laboratories for Purpose of Ensuring the Availability of Uncommon Forensic Analyses, Timeliness of Forensic Analyses, and/or Service to Counties with Limited Access to Forensic Analysis, without changes to the proposed text as published in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7106). The adopted new rule will not be republished.

The new rule adds a blanket license option for out-of-state laboratories for the purpose of ensuring the availability of uncommon forensic analyses, timeliness of forensic analyses, and/or service to counties with limited access to forensic analysis. The rule is necessary to reflect adoptions made by the Commission at its October 5, 2018, quarterly meeting. The rule is made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a.

Summary of Comments. No comments were received regarding the adoption of this section.

Statutory Authority. The rule is adopted under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The adoption affects 37 TAC Chapter 651.

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 November 26, 2018.

TRD-201805006

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Effective date: December 16, 2018
Proposal publication date: October 26, 2018
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §364.1, concerning requirements for licensure, with changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5759). The rule will be republished.

The change is to replace in §364.1(a)(5) the phrase "submit a complete and legible set of fingerprints on a form prescribed by the Board to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation" with "submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation" to clarify the provision.

The amendments to §364.1 are adopted to clean up and clarify the section and to add provisions to the section regarding the Board obtaining applicants' criminal history record information.

Clean ups and clarifications pertain to provisions regarding application requirements for initial Texas licensure. Provisions concerning educational requirements for initial Texas licensure have been revised in accordance with changes to the Occupational Therapy Practice Act, Tex. Occ. Code Chapter 454, pursuant to SB 317 from the 85th Legislative Session (Regular). The Legislature changed §454.203 of the Act, removing requirements for applicants to complete a specific number of weeks of supervised field work experience, and instead requiring the completion of field work experience requirements of an educational program in occupational therapy recognized by the Board. In the amendments, consequently, language referring to specified weeks of field work has been removed and replaced with a provision that refers to the relevant section of the Act. In addition, language referring to the completion of an accredited OT/OTA program in §364.1 has been replaced with language referring to academic requirements for applicants as specified in §454.203 of the Act. In the amendments, language has also been added referencing §454.205 of the Act, wherein academic and supervised field work requirements for foreign-trained applicants are described.

Further clean ups in the amendments include removing provisions that appear elsewhere in the OT Rules from the section and replacing such with a provision noting that "Applicants and

new licensees shall refer to Chapter 369 of this title for provisions regarding information changes and verification of temporary or regular license issuance and current licensure." Further clean ups and clarifications appear in the amendments.

The amendments include adding a provision requiring an applicant's submission of fingerprints. Such changes are adopted pursuant to the addition to the Act of §454.217, adopted by the 85th Legislature, requiring an applicant to submit fingerprints to the Department of Public Safety for the purpose of the Board obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

Regarding criminal history record information, adopted amendments to §370.1, concerning license renewal; §370.3, concerning license restoration; §371.1, concerning inactive status; and §371.2, concerning retired status, have also been submitted to the *Texas Register* for publication.

No comments were received regarding adoption of §364.1.

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

§364.1. *Requirements for Licensure.*

(a) All applicants for initial Texas licensure shall:

(1) submit a complete application form as prescribed by the Board and non-refundable application fee as set by the Executive Council;

(2) submit a current photograph that meets the requirements for a U.S. passport;

(3) submit a successfully completed Board jurisprudence examination on the Act and Rules;

(4) have completed academic and supervised field work requirements of an accredited educational program in occupational therapy as per §454.203 of the Act (relating to Qualifications for Occupational Therapist or Occupational Therapy Assistant License) or if foreign-trained, have met substantially equivalent academic and supervised field work requirements as per §454.205 of the Act (relating to Foreign-Trained Applicants);

(5) submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; and

(6) either meet the requirements in §364.2 of this title (relating to Initial License by Examination) and apply by examination or meet the requirements in §364.4 of this title (relating to Licensure by Endorsement) and apply by endorsement.

(b) The applicant must also meet the requirements in §364.2 of this title and apply by examination if the applicant:

(1) has not passed the NBCOT certification examination;

or

(2) has passed the NBCOT certification examination and

(A) is not currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state

or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(c) The applicant must also meet the requirements in §364.4 of this title and apply by endorsement if the applicant has passed the NBCOT certification examination and:

(1) is currently licensed as an occupational therapist or occupational therapy assistant in another state or territory of the U.S.; or

(2) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(d) Applicants who are military service members, military veterans, and military spouses:

(1) The Board shall credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, with respect to an applicant who is a military service member or military veteran.

(2) The Board shall waive the application fees for a military service member or military veteran who is applying for a license by examination as per §364.2 of this title (relating to Initial License by Examination). In order to request a waiver of application fees, the military service member or military veteran must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

(3) The Board shall waive the application fees and will expedite the issuance of a license for a military service member, military veteran, or military spouse who is applying for licensure by endorsement as per §364.4 of this title (relating to Initial Licensure by Endorsement). In order to request a waiver of application fees and expedited services, the military service member, military veteran, or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation.

(4) In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

(e) An application for license is valid for one year after the date it is received by the Board. At the end of the year, the application fee must be paid to continue the application process for the second year.

(f) An applicant who submits an application containing false information may be denied a license by the Board.

(g) Should the Board reject an application for license, the reasons for the rejection will be communicated in writing to the applicant. The applicant may submit additional information and request reconsideration by the Board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act.

(h) Applicants and new licensees shall refer to Chapter 369 of this title for provisions regarding information changes and verification of temporary or regular license issuance and current licensure.

(i) The address of record is the information provided to the public. Until applicants and licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available,

the home address will be used. Applicants and licensees may update this information at any time.

(j) The first regular license is valid from the date of issuance until the last day of the applicant's birth month, with a duration of at least two years.

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 November 19, 2018.

TRD-201804972

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: January 1, 2019

Proposal publication date: September 7, 2018

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



CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1, 370.3

The Texas Board of Occupational Therapy Examiners adopts amendments to §370.1, concerning license renewal, and §370.3, concerning license restoration, with changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5762). The rules will be republished.

The changes are to replace in §370.1(a)(1)(E) the phrase "a complete and legible set of fingerprints on a form prescribed by the Board submitted to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation" with "a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation" and in §370.3(a)(2)(E), §370.3(b)(2)(F), and §370.3(c)(2)(E) the phrase "submit a complete and legible set of fingerprints on a form prescribed by the Board to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation" with "submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation." The changes are to clarify the provisions.

The amendments to §370.1 and §370.3 are adopted to clean up and clarify the sections and to add provisions to the sections regarding the Board obtaining licensees' criminal history record information.

Clean ups and clarifications pertain to provisions regarding application requirements for the renewal of a Texas occupational therapy license. Such changes include removing "online" from provisions in §370.1 and §370.3 concerning the jurisprudence examination, as such is defined in §362.1 of the OT Rules, concerning definitions, as an online examination. In the amendments to §370.1, references to a paper or online application have

also been replaced with language referring to an application form as prescribed by the Board and with references to further requirements licensees must meet in additional sections of the OT Rules. Further clean ups and clarifications appear in §370.1 and §370.3.

The amendments include adding provisions requiring a licensee's submission of fingerprints. Such changes are adopted pursuant to the addition to the Act of §454.255, adopted by the 85th Legislature, requiring a licensee to submit fingerprints to the Department of Public Safety for the purpose of the Board obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

Regarding criminal history record information, adopted amendments to §364.1, concerning requirements for licensure; §371.1, concerning inactive status; and §371.2, concerning retired status, have also been submitted to the *Texas Register* for publication.

No comments were received regarding adoption of §370.1 and §370.3.

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

§370.1. License Renewal.

(a) Licensee Renewal. Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license. Licenses and license expiration dates should be verified on the Board's license verification web page.

(1) General Requirements. The renewal application is not complete until the Board receives all required items. The components required for license renewal are:

(A) a complete renewal application form as prescribed by the Board verifying completion of 30 hours of continuing education, as per Chapter 367 of this title (relating to Continuing Education);

(B) the renewal fee and any late fees as set by the Executive Council that may be due;

(C) a passing score on the jurisprudence examination;

(D) the licensee's physical address, any work address, other mailing address, email address, and a chosen address of record. The address of record is the address that will be shared with the public. Until licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used; and

(E) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) The renewal process is not complete until the Board's license verification web page reflects that the license has been renewed by displaying the new renewal date.

(4) Renewal fees and late fees are non-refundable.

(5) Licensees electing to change their status or renewing a license on inactive or retired status must meet further requirements as per Chapter 371 of this title (relating to Inactive and Retired Status).

(6) Licensees renewing a license expired one year or more must meet further requirements as per §370.3 of this title (relating to Restoration of a Texas License).

(b) Restrictions to Renewal.

(1) The Board will not renew a license if a licensee has defaulted with the Texas Guaranteed Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed if all other renewal requirements have been met.

(2) The Board will not renew a license if the licensee has defaulted on a court or Attorney General's notice of child support. Upon receipt that repayment has been established, the license shall be renewed if all other renewal requirements have been met.

§370.3. *Restoration of a Texas License.*

(a) Restoration of a license expired one year or more to a person with a current license or occupational therapy employment:

(1) The Board may restore a license to a person whose Texas license has been expired one year or more if the person:

(A) is currently licensed in another state or territory of the U.S. and that license has not been suspended, revoked, cancelled, surrendered or otherwise restricted for any reason; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and can substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form as prescribed by the Board, which includes a current photograph that meets the requirements for a U.S. passport;

(B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board. If not currently licensed in another state or territory of the U.S. and applying from the U.S. military or a non-licensing state or territory of the U.S., the person must submit a Verification of Employment form substantiating occupational therapy employment for at least two years immediately preceding application for a Texas license;

(C) pass the jurisprudence examination;

(D) pay the restoration fee; and

(E) submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(b) Restoration of a license expired at least one year but less than two years to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired at least one year but less than two years to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form as prescribed by the Board, which includes a current photograph that meets the requirements for a U.S. passport;

(B) submit copies of the completed continuing education showing 45 hours of continuing education as per Chapter 367 of this title (relating to Continuing Education);

(C) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(D) pass the jurisprudence examination;

(E) pay the restoration fee; and

(F) submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(c) Restoration of a license expired two years or more to a person without a current license or occupational therapy employment:

(1) The Board may restore a license expired two years or more to a person who was licensed in Texas and:

(A) is not currently licensed in another state or territory of the U.S.; or

(B) if not currently licensed in another state or territory of the U.S., is applying from the U.S. military or a non-licensing state or territory of the U.S. and cannot substantiate occupational therapy employment for at least two years immediately preceding application for a Texas license.

(2) The person shall meet the following requirements:

(A) submit a completed restoration application form as prescribed by the Board, which includes a current photograph that meets the requirements for a U.S. passport;

(B) submit to the Board a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. This must be an original verification sent directly to the Board by the licensing board in that state or territory. Any disciplinary actions must be reported to the Board;

(C) pass the jurisprudence examination;

(D) pay the restoration fee;

(E) submit a complete and legible set of fingerprints in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status; and

(F) satisfy one of the following:

(i) complete a re-entry course through an accredited college or university and submit the certificate of completion or transcript to the Board;

(ii) obtain an advanced or post-professional occupational therapy degree, with an official transcript sent to the Board; or

(iii) take and pass the NBCOT examination for licensure purposes only (after requesting Board approval to take the examination) and have the passing score reported to the Board directly by NBCOT.

(d) The Board shall expedite the restoration of a license to a military service member, military veteran, or military spouse. To request expedited services, the military service member, military veteran, or military spouse must submit a copy of the Uniformed Services Military ID card or other appropriate official documentation evidencing current or former military affiliation and notify the Board of his or her military affiliation. In this section, "military service member," "military veteran," and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

(e) The licensee whose license has been restored shall refer to Chapter 369 of this title for provisions regarding verification of current licensure.

(f) The restoration fee as set by the Executive Council is non-refundable.

(g) Restoration requirements must be met within one year of the Board's receipt of the application. Restoration requirements are based on the length of time the license has been expired and whether the individual has a current license or occupational therapy employment as specified in this section at the time of the licensee's restoration.

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 November 19, 2018.

TRD-201804975

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: January 1, 2019

Proposal publication date: September 7, 2018

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



CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners adopts amendments to §371.1, concerning inactive status, and §371.2, concerning retired status, with changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5765). The rules will be republished.

The changes are to replace in §371.1(d)(5), §371.2(c)(5), and §371.2(d)(5) the phrase "a complete and legible set of fingerprints on a form prescribed by the Board submitted to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation" with "a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation" to clarify the provisions.

The amendments to §371.1 and §371.2 are adopted to clean up and clarify the sections and to add provisions to the sections regarding the Board obtaining licensees' criminal history record information.

Clean ups and clarifications pertain to removing "online" from provisions concerning the jurisprudence examination, as such is defined in §362.1 of the OT Rules, concerning definitions, as an online examination. Further clarifications and clean ups appear in the amendments, including removing a reference in §371.2 to verification of current licensure, as provisions concerning verification of current licensure already appear elsewhere in the OT Rules.

The amendments include adding provisions requiring a licensee's submission of fingerprints. Such changes are adopted pursuant to the addition to the Act of §454.255, adopted by the 85th Legislature, requiring a licensee to submit fingerprints to the Department of Public Safety for the purpose of the Board

obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

Regarding criminal history record information, adopted amendments to §364.1, concerning requirements for licensure; §370.1, concerning license renewal; and §370.3, concerning license restoration, have also been submitted to the *Texas Register* for publication.

No comments were received regarding adoption of §371.1 and §371.2.

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

§371.1. *Inactive Status.*

(a) Inactive status indicates the voluntary termination of the right to practice occupational therapy by a licensee in good standing with the Board. The Board may allow an individual who is not actively engaged in the practice of occupational therapy to put an active license on inactive status at the time of renewal. A licensee may remain on inactive status for no more than three renewals or six consecutive years and may not represent himself or herself as an occupational therapist or occupational therapy assistant.

(b) Required components to put a license on inactive status are:

(1) a completed renewal application form as prescribed by the Board documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education);

(2) the inactive status fee and any late fees that may be due; and

(3) a passing score on the jurisprudence examination.

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every 2 years. The components required to maintain the inactive status are:

(1) a completed renewal application form as prescribed by the Board documenting completion of the required continuing education as described in Chapter 367 of this title (relating to Continuing Education);

(2) the inactive status renewal fee and any late fees that may be due; and

(3) a passing score on the jurisprudence examination.

(d) Requirements for reinstatement to active status. A licensee on inactive status may request to return to active status at any time. The components required to return to active status are:

(1) a completed renewal application form as prescribed by the Board;

(2) the renewal fee and any late fees that may be due;

(3) a passing score on the jurisprudence examination;

(4) proof of the required continuing education, if required; and

(5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required

to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) If the inactive status license has been expired one year or more, in order to return to active status, the individual must follow the procedures to restore the license according to §370.3 of this title (relating to Restoration of a Texas License).

(f) The inactive status fees and any late fees as set by the Executive Council are nonrefundable.

(g) Licensees on inactive status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

§371.2. *Retired Status.*

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "Voluntary charity care" means occupational therapy services provided as a volunteer with no compensation, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "Compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status or an active or inactive license that has been expired less than one year.

(c) Requirements for initial retired status are:

(1) a completed retired status application form as prescribed by the Board;

(2) a passing score on the jurisprudence examination;

(3) the completed continuing education for the current renewal period;

(4) the retired status application fee and any late fees that may be due; and

(5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety

and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:

(1) a completed retired status renewal form as prescribed by the Board;

(2) a passing score on the jurisprudence examination;

(3) the retired status renewal fee and any late fees that may be due;

(4) completion of 6 hours of continuing education each license renewal period, as described in Chapter 367 of this title (relating to Continuing Education); and

(5) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(A) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(B) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(C) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the regular license renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal). A licensee who has been on retired status for one year or more must follow the procedures for §370.3 of this title (relating to Restoration of Texas License).

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the OT Practice Act.

(i) The retired status fees and any late fees as set by the Executive Council are nonrefundable.

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 November 19, 2018.

TRD-201804978

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Texas Board of Occupational Therapy Examiners
Effective date: January 1, 2019

Proposal publication date: September 7, 2018

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

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CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LICENSEURE OF PERSONS WITH CRIMINAL CONVICTIONS

40 TAC §374.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §374.1, concerning disciplinary actions, without changes to the proposed text as published in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5767). The rule will not be republished.

The amendments are adopted to add information concerning a schedule of sanctions to the chapter in order to comply with a recent statutory amendment to the Occupational Therapy Practice Act, Tex. Occ. Code Chapter 454.

The amendments would add a schedule of sanctions to the section and information regarding factors considered in conjunction with the schedule of sanctions when determining the appropriate penalty/sanction in disciplinary matters. The amendments are adopted pursuant to the addition to the Act of §454.3025, adopted by the 85th Legislature, requiring the Board to adopt a schedule of sanctions.

No comments were received regarding adoption of §374.1.

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

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 November 19, 2018.

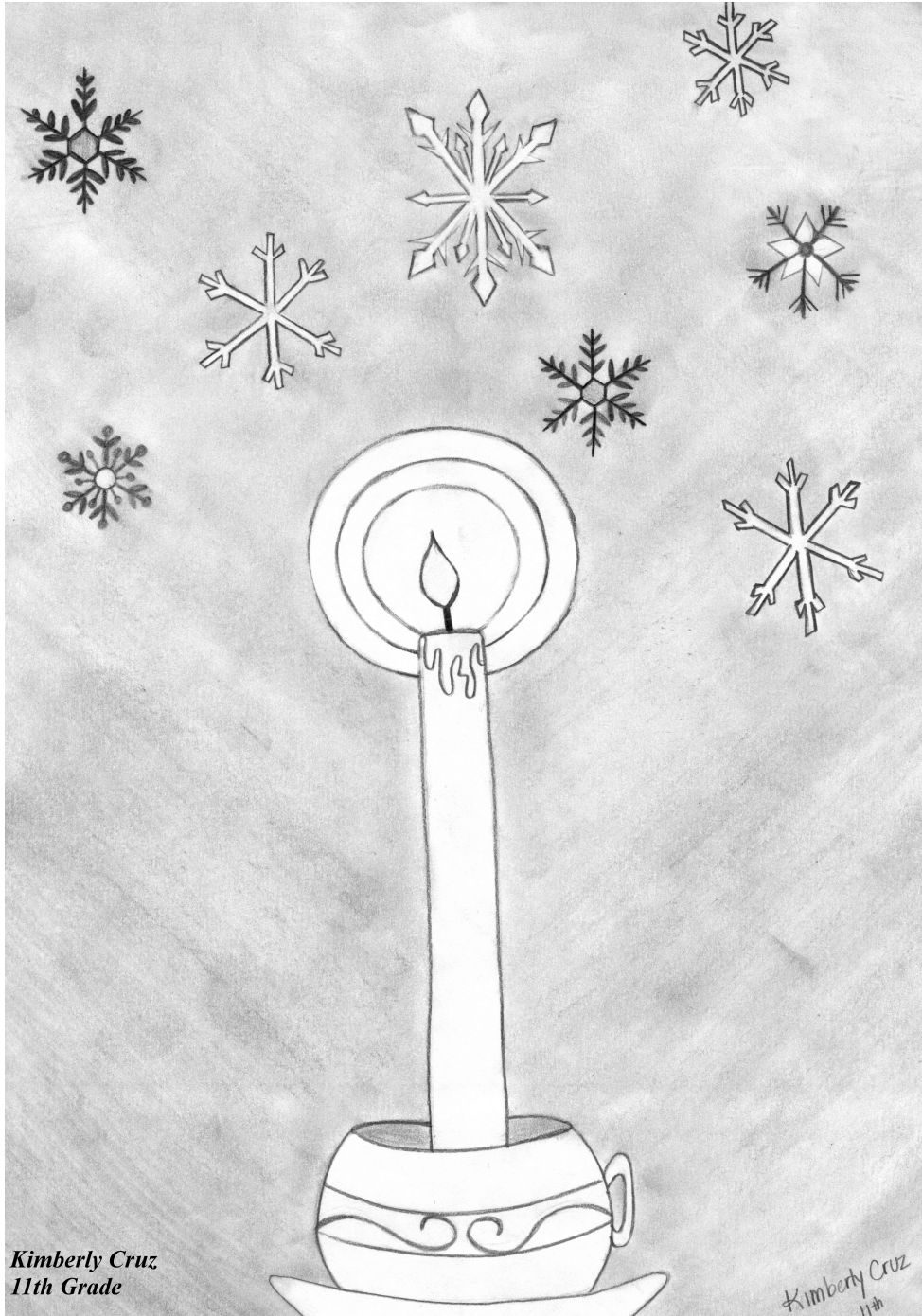
TRD-201804982

John P. Maline
Executive Director

Texas Board of Occupational Therapy Examiners
Effective date: January 1, 2019

Proposal publication date: September 7, 2018

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



Kimberly Cruz
11th Grade

Kimberly Cruz
11th

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 20, Rulemaking.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 20 continue to exist.

Comments regarding suggested changes to the rules in Chapter 20 may be submitted, but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 20. Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-004-020-LS. Comments must be received by January 10, 2019. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

TRD-201804998

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 26, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 122, Federal Operating Permits Program.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 122 continue to exist.

Comments regarding suggested changes to the rules in Chapter 122 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 122. Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2018-048-122-AI. Comments must be received by January 10, 2019. For further information, please contact Sherry Davis, Air Permits Division, at (512) 239-2141.

TRD-201805028

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 27, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 218, Brine Evaporation Pits.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 218 continue to exist.

Comments regarding suggested changes to the rules in Chapter 218 may be submitted, but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 218. Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system.

tem. All comments should reference Non-Rule Project Number 2018-052-218-OW. Comments must be received by January 11, 2019. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

TRD-201804999

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 26, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 305, Consolidated Permits.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 305 continue to exist.

Comments regarding suggested changes to the rules in Chapter 305 may be submitted, but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 305. Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-005-305-WS. Comments must be received by January 11, 2019. For further information, please contact Ms. Charly Fritz, Waste Permits Division, at (512) 239-2331.

TRD-201805029

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 27, 2018



State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning December 2018, will review and consider for readoption, revision, or repeal Chapter 113, Registration of Securities; Chapter 114, Federal Covered Securities; Chapter 123, Administrative Guidelines for Registration of Open-End Investment Companies; Chapter 125, Minimum Disclosures in Church and Nonprofit Institution Bond Issues; Chapter 135, Industrial Development Corporations and Authorities; and Chapter 137, Administrative Guidelines for Regulation of Offers; in accordance with Texas Government Code, §2001.039, which requires rule review every four years. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code. The text of the rule sections will not be published. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Agency has conducted a preliminary review of these chapters and determined the reasons for initially adopting the chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether any changes are needed. Changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001; thus this notice to review has no effect on the chapters as they currently exist. Readopted rules will be noted in a subsequent issue of the *Texas Register's* "Review of Agency Rules" section without publication of the text.

Comments or suggestions on the proposal must be in writing and will be accepted for 30 days following publication of this notice in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication. Comments received will be reviewed and discussed in a future Board meeting.

Issued in Austin, Texas on November 26, 2018.

TRD-201805021

Travis J. Iles

Securities Commissioner

State Securities Board

Filed: November 26, 2018



Adopted Rule Reviews

Texas Appraiser Licensing and Certification Board

Title 22, Part 8

In accordance with Texas Government Code §2001.039, the Texas Appraiser Licensing and Certification Board (TALCB) has concluded its review of 22 TAC Chapter 159, Rules Relating to the Provisions of the Texas Appraisal Management Company Registration and Regulation Act. The notice of proposed rule review was published in the May 11, 2018, issue of the *Texas Register* (43 TexReg 3125).

TALCB has determined that the reasoned justification for adopting 22 TAC 159 continues to exist. Furthermore, the review process has indicated that specific rules be amended to further refine or better reflect current TALCB procedures and policy considerations, or that rules be combined or reduced for simplification and clarity. Accordingly, TALCB adopts amendments to rules in 22 TAC 159 (proposed in the September 7, 2018, issue of the *Texas Register* (43 TexReg 5746) and adopted under the Adopted Rules section of this issue of the *Texas Register*).

No comments were received regarding TALCB's notice of review. This notice concludes TALCB's review of 22 TAC Chapter 159, Rules Relating to the Provisions of the Texas Appraisal Management Company Registration and Regulation Act.

TRD-201804968

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Filed: November 19, 2018



Texas Real Estate Commission

Title 22, Part 23

In accordance with Texas Government Code §2001.039, the Texas Real Estate Commission (TREC) has concluded its review of Texas Administrative Code, Title 22, Part 23, Chapter 535, General Provisions. The notice of proposed rule review was published in the May 25, 2018, issue of the *Texas Register* (43 TexReg 3483).

TREC has determined that the reasoned justification for adopting Texas Administrative Code, Title 22, Part 23, Chapter 535 continues to exist. Furthermore, this review process indicated that certain rules needed to be amended to further refine or better reflect current TREC procedures and policy considerations or that rules should be combined or reduced for simplification and clarity. Accordingly, amendments to 22 TAC Chapter 535 were proposed and published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5643) and are adopted under the Adopted Rules section of this issue of the *Texas Register*.

No comments were received regarding TREC's notice of review. This notice concludes TREC's review of Texas Administrative Code, Title 22, Part 23, Chapter 535.

TRD-201804987
Kerri Lewis
General Counsel
Texas Real Estate Commission
Filed: November 19, 2018



State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the September 7, 2018 issue of the *Texas Register* (43 TexReg 5815), the State Se-

curities Board (Agency) has reviewed and considered for re adoption, revision, or repeal all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039, Agency Review of Existing Rules: Chapter 101, General Administration; Chapter 103, Rulemaking Procedure; and Chapter 104, Procedure for Review of Applications. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Agency's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Agency considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Agency finds that the reasons for adopting these rules continue to exist and readopts this chapter, without changes, pursuant to the requirements of the Texas Government Code.

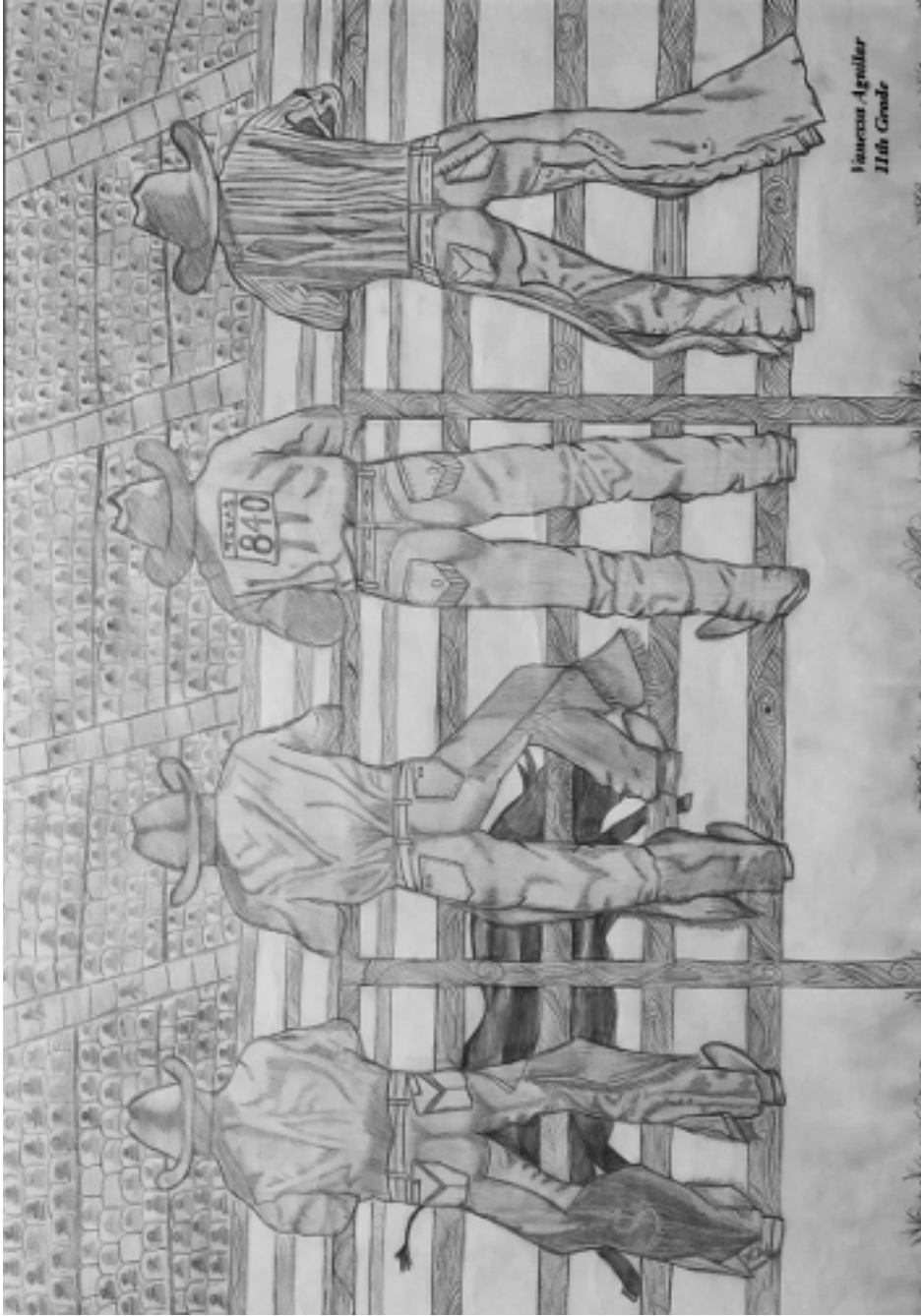
As part of the review process, the Agency is proposing to amend §§101.6, 103.5, and 104.5. Notices of the proposed amendments will be published in the "Proposed Rules" section of a future issue of the *Texas Register*, and will be open for comment prior to final adoption by the Agency, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

No comments were received regarding the re adoption of Chapters 101, 103, or 104.

This concludes the review of 7 TAC Chapters 101, 103, and 104.

TRD-201805023
Travis J. Iles
Securities Commissioner
State Securities Board
Filed: November 26, 2018





Vasquez Apparel
11th Grade

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/26/18 - 12/02/18 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/26/18 - 12/02/18 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/18 - 12/31/18 is 5.25% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/18 - 12/31/18 is 5.25% for commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201804993

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 20, 2018



Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/03/18 - 12/09/18 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/03/18 - 12/09/18 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 11/01/18 - 11/30/18 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/18 - 11/30/18 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/19 - 03/31/19 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101¹ for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/19 - 03/31/19 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 01/01/19 - 03/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/18 - 12/31/18 is 5.25% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 12/01/18 - 12/31/18 is 5.25% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

⁴Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201805031

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 27, 2018



Texas Commission on Environmental Quality

Agreed Orders

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 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 **January 14, 2019**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction.

tion 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 **January 14, 2019**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Armand J. Colaninni and Ellen Colaninni; DOCKET NUMBER: 2018-1060-WR-E; IDENTIFIER: RN102808987; LOCATION: Nocona, Montague County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: \$750; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: City of Evant; DOCKET NUMBER: 2018-1135-MWD-E; IDENTIFIER: RN101920403; LOCATION: Evant, Coryell County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0011011001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$6,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,400; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Palmer; DOCKET NUMBER: 2018-1059-MWD-E; IDENTIFIER: RN102092962; LOCATION: Palmer, Ellis County; TYPE OF FACILITY: wastewater facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0014795001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: \$14,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,700; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Portland; DOCKET NUMBER: 2018-1558-WQ-E; IDENTIFIER: RN103016416; LOCATION: Portland, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(5) COMPANY: City of Post; DOCKET NUMBER: 2018-0972-PWS-E; IDENTIFIER: RN101421519; LOCATION: Post, Garza County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(e)(7)(C), by failing to provide sampling taps at locations that allow for the chlorine and ammonia to be added

to the water to form monochloramine as the primary species; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.44(h)(3), by failing to provide an air gap between the filling outlet hose and the receiving tank at the overhead bulk water dispensing station; 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation, and on an annual basis by a recognized backflow assembly tester, and certified that they are operating within specifications; 30 TAC §290.46(e)(4)(C), by failing to operate the facility under the direct supervision of at least two water works operators who hold a Class C or higher license; 30 TAC §290.46(f)(2) and (3)(A)(i)(II), by failing to maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe that a cross-connection or other potential contamination hazard exists; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 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)(1)(A), by failing to conduct an annual inspection of the facility's 1.0 million gallon (MG) ground storage tank in 2017; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's 0.01 MG pressure tank in 2017, and failing to conduct an inspection of the interior of the facility's 0.01 MG pressure tank with an inspection port at least once every five years; 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(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility, and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.46(z), by failing to develop a nitrification action plan for a system distributing chloraminated water; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$5,221; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(6) COMPANY: Esmeralda Sanjuan dba Deer Trail Mobile Home Park; DOCKET NUMBER: 2018-1025-PWS-E; IDENTIFIER: RN101237923; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(E)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 1.0 gallon per minute per connection; 30 TAC §290.45(b)(1)(E)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 50 gallons per connection; 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 until the facility is decommissioned; and 30 TAC §290.45(h)(1), by failing to provide sufficient power to meet the capacity requirements in accordance with the affected

utility's approved Emergency Preparedness Plan; PENALTY: \$205; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: ETC Field Services LLC; DOCKET NUMBER: 2018-1020-AIR-E; IDENTIFIER: RN100213628; LOCATION: Sunray, Moore County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 20418 and PS-DTX787M2, Special Conditions Number 1, Federal Operating Permit (FOP) Number O629, Special Terms and Conditions (STC) Number 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O629, STC Number 2.F, and 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 an emissions event; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: Frances Marie Kraft dba Kraft's Country Store; DOCKET NUMBER: 2018-0927-PST-E; IDENTIFIER: RN101182335; LOCATION: Needville, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(d)(3)(D) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system; 30 TAC §115.242(d)(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; and 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); PENALTY: \$4,600; ENFORCEMENT COORDINATOR: John Paul Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Grady Independent School District; DOCKET NUMBER: 2018-1089-PWS-E; IDENTIFIER: RN101195030; LOCATION: Lenorah, Martin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code (THSC), §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; and 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at the facility's entry point and the required distribution sample site, have the samples analyzed, and report the results to the executive director for the July 1, 2017 - December 31, 2017, monitoring period; PENALTY: \$495; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: Hossain Makvandi dba Heath Market Place; DOCKET NUMBER: 2018-1002-PST-E; IDENTIFIER: RN101541621; LOCATION: Heath, Rockwall 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 in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: KASHISH CORPORATION dba Dairy Mart 7; DOCKET NUMBER: 2018-0990-PST-E; IDENTIFIER: RN105113302; LOCATION: Fort Worth, Tarrant 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 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$13,526; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Lide Industries, LLC; DOCKET NUMBER: 2018-1131-AIR-E; IDENTIFIER: RN105047450; LOCATION: Troy, Bell County; TYPE OF FACILITY: storage tank manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O2923, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$3,563; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3424; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Linda Mosbacher; DOCKET NUMBER: 2018-0478-MLM-E; IDENTIFIER: RN109492223; LOCATION: Shepherd, San Jacinto County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state of Texas; 30 TAC §324.1 and §324.4(1) and 40 Code of Federal Regulations (CFR) §279.22(d)(3), by failing to prevent the disposal of used oil on the ground, and failing to clean up and manage properly the released used oil; 30 TAC §324.6 and 40 CFR §279.22(c), by failing to mark or clearly label used oil storage containers with the words "Used Oil"; and 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the collection, storage, processing or disposal of MSW; PENALTY: \$11,339; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: LLCM, LLC; DOCKET NUMBER: 2018-1171-PWS-E; IDENTIFIER: RN102684321; LOCATION: Jewett, Limestone County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 §290.46(m)(1)(B), by failing to inspect the facility's one pressure tank annually; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 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; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$465; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Midway Range, LLC; DOCKET NUMBER: 2018-0667-PWS-E; IDENTIFIER: RN101247229; LOCATION: Granbury,

Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(2), and TCEQ Agreed Order Docket Number 2016-1936-PWS-E, Ordering Provision Number 2.a, by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.46(n)(1), and TCEQ Agreed Order Docket Number 2016-1936-PWS-E, Ordering Provision Number 2.c, 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; PENALTY: \$2,344; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: OCH Land, LLC; DOCKET NUMBER: 2018-1587-WQ-E; IDENTIFIER: RN110502523; LOCATION: Argyle, Denton County; TYPE OF FACILITY: home construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Permian Frac Sand, LLC; DOCKET NUMBER: 2018-1162-PWS-E; IDENTIFIER: RN107867327; LOCATION: Voca, McCulloch County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e), by failing to collect inorganic contaminants samples and provide the results to the executive director (ED); 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; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the ED each quarter by the tenth day of the month following the end of the quarter for the third quarter of 2017 through the first quarter of 2018; PENALTY: \$1,684; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(18) COMPANY: R7R Event Center, LLC; DOCKET NUMBER: 2018-1070-PWS-E; IDENTIFIER: RN109460733; LOCATION: Odessa, Ector County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e) and §290.118(c) and (e), by failing to collect nitrate/nitrite and secondary constituent samples and provide the results to the executive director for the January 1, 2017 - December 31, 2017, monitoring period; PENALTY: \$449; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(19) COMPANY: Santek Environmental of Texas, LLC dba Polk County Landfill; DOCKET NUMBER: 2018-0842-MSW-E; IDENTIFIER: RN102668654; LOCATION: Leggett, Polk County; TYPE OF FACILITY: type 1 landfill; RULES VIOLATED: 30 TAC §330.15(a)(1) and (h)(1), and TWC, §26.121(a), and Municipal Solid Waste (MSW) Permit Number 1384A, Site Operating Plan (SOP) Section 4.23 - Prevention of Discharge of Contaminated Water, by failing to not cause, suffer, allow, or permit the unauthorized discharge of MSW into or adjacent to waters in the state; 30 TAC §330.73(a) and MSW Permit Number 1384A, SOP Section 2.3 - Equipment, Table 4 Equipment List, and Part III, Site Development Plan, Attachment 1 - Site Layout Map, by failing to amend the facility's permit prior to implementing the use of new equipment at the facility and modifying the site layout at the facility; 30 TAC §330.121(a) and MSW Permit

Number 1384A, SOP Section 2.2 - Training, Table 3 - Training Requirements, by failing to not deviate from the incorporated SOP; 30 TAC §330.125(e) and MSW Permit Number 1384A, SOP Section 1.2 - Recordkeeping Requirements, by failing to maintain training records at the facility; 30 TAC §330.145 and MSW Permit Number 1384A, SOP Section 4.8 - Control of Waste Spilled on Route to the Site, by failing to ensure daily cleanup of waste materials spilled along and within the right-of-way of public access roads serving the facility for a distance of two miles in either direction from any entrances used for delivery of waste to the facility; 30 TAC §330.165(a) and (d)(3) and MSW Permit Number 1384A, SOP Section 4.18.2 - Daily Cover, by failing to apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day; 30 TAC §330.165(g) and MSW Permit Number 1384A, SOP Sections 4.18.2 - Daily Cover and 4.18.3 - Intermediate Cover, by failing to repair erosion of the daily cover after each rainfall event and erosion of the intermediate cover within five days of detection; and 30 TAC §330.167 and MSW Permit Number 1384A, SOP Section 4.19 - Prevention of Pounded Water, by failing to prevent ponding of water over waste on a landfill, and failing to fill in or regrade any areas in which ponding occurs within seven days of the occurrence; PENALTY: \$25,998; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Southcross Gathering Ltd.; DOCKET NUMBER: 2018-0828-AIR-E; IDENTIFIER: RN102892965; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O767/General Operating Permit (GOP) Number 511, Site-wide Requirements (b)(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O767/GOP Number 511, Site-wide Requirements (b)(3), and THSC, §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$9,001; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,600; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201805024
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 27, 2018

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Enforcement Orders

An agreed order was adopted regarding Charles Trois dba The Trois Estate at Enchanted Rock and Rebecca Trois dba The Trois Estate at Enchanted Rock, Docket No. 2017-0361-PWS-E on November 27, 2018, assessing \$500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TERRA SOUTHWEST INC., Docket No. 2017-0368-PWS-E on November 27, 2018, assessing \$718 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ROLLING HILLS WATER SERVICE, INC., Docket No. 2017-0929-PWS-E on November 27, 2018, assessing \$700 in administrative penalties with \$140 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORTH TEXAS DISTRICT COUNCIL ASSEMBLIES OF GOD, Docket No. 2017-1672-MWD-E on November 27, 2018, assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas

An agreed order was adopted regarding COUTO HOMES INC., Docket No. 2017-1725-WQ-E on November 27, 2018, assessing \$2,500 in administrative penalties with \$500 deferred. Information concerning any aspect of this order may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Conroe Independent School District, Docket No. 2018-0015-MWD-E on November 27, 2018, assessing \$2,375 in administrative penalties with \$475 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, Docket No. 2018-0089-PWS-E on November 27, 2018, assessing \$200 in administrative penalties with \$40 deferred. Information concerning any aspect of this order may be obtained by contacting Michaëlle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ABRAXAS CORPORATION, Docket No. 2018-0119-PWS-E on November 27, 2018, assessing \$130 in administrative penalties with \$26 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding US Ayaan LLC dba Speed Track, Docket No. 2018-0132-PST-E on November 27, 2018, assessing \$4,500 in administrative penalties with \$3,300 deferred. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PATTERSON WATER SUPPLY, LLC, Docket No. 2018-0158-PWS-E on November 27, 2018, assessing \$200 in administrative penalties with \$40 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Arp, Docket No. 2018-0169-PWS-E on November 27, 2018, assessing \$1,142 in administrative penalties with \$228 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2018-0255-PWS-E on November 27, 2018, assessing \$900 in administrative penalties with \$180 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CYPRESS VALLEY WATER SUPPLY CORPORATION, Docket No. 2018-0282-PWS-E on November 27, 2018, assessing \$1,050 in administrative penalties with \$210 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RURAL BARDWELL WATER SUPPLY CORPORATION, Docket No. 2018-0328-PWS-E on November 27, 2018, assessing \$630 in administrative penalties with \$126 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding UNION ESTABLISHMENT LLC dba Race Runner 4, Docket No. 2018-0344-PST-E on November 27, 2018, assessing \$6,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Corix Utilities (Texas) Inc., Docket No. 2018-0346-MWD-E on November 27, 2018, assessing \$1,625 in administrative penalties with \$325 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Yorktown, Docket No. 2018-0391-MWD-E on November 27, 2018, assessing \$1,900 in administrative penalties with \$380 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Westport Boerne Self Storage, LLC, Docket No. 2018-0443-PWS-E on November 27, 2018, assessing \$350 in administrative penalties with \$70 deferred. Information concerning any aspect of this order may be obtained by contacting Michaëlle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BUCHANAN LAKE VILLAGE, INC., Docket No. 2018-0460-PWS-E on November 27, 2018, assessing \$679 in administrative penalties with \$135 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KK United Solutions Inc dba NYS Food Mart, Docket No. 2018-0469-PST-E on November 27, 2018, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ironroc Energy Partners LLC, Docket No. 2018-0494-AIR-E on November 27, 2018, assessing \$1,000 in administrative penalties with \$200 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding C&J Well Services, Inc., Docket No. 2018-0503-AIR-E on November 27, 2018, assessing \$1,187 in administrative penalties with \$237 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HORIZON TURF GRASS, INC., Docket No. 2018-0559-WR-E on November 27, 2018, assessing \$555 in administrative penalties with \$111 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sergio Gutierrez, Docket No. 2018-0563-AIR-E on November 27, 2018, assessing \$1,125 in administrative penalties with \$225 deferred. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wheel Technologies, Inc., Docket No. 2018-0593-AIR-E on November 27, 2018, assessing \$1,000 in administrative penalties with \$200 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ST. PAUL WATER SUPPLY CORPORATION, Docket No. 2018-0640-PWS-E on November 27, 2018, assessing \$1,070 in administrative penalties with \$214 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CONCRETE CRUSHING CO., INC., Docket No. 2018-0716-WR-E on November 27, 2018, assessing \$375 in administrative penalties with \$75 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Spicewood Trails LLC, Docket No. 2018-0981-WQ-E on November 27, 2018, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Herbert Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201805040

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater New Permit No. WQ0015689001

APPLICATION AND PRELIMINARY DECISION. Crockett Martin Corp., 11166 Crockett Martin Road, Conroe, Texas 77306, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015689001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. TCEQ received this application on May 17, 2018.

The facility will be located at 11166 Crockett Martin Road, in Montgomery County, Texas 77306. The treated effluent will be discharged directly to Caney Creek in Segment No. 1010 of the San Jacinto River Basin. The designated uses for Segment No. 1010 are high aquatic life use, public water supply, and primary contact recreation. In accordance with 30 TAC Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), 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 Caney Creek, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.288044&lng=-95.3115&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 Montgomery County Central Library, 104 Interstate Highway 45 North, Conroe, Texas.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application.

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 permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the

permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, January 7, 2019, at 7:00 p.m.

Grangerland Community Center

(Second Floor Courtroom)

15636 FM 3083

Grangerland, Texas 77302

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission 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 Commissioners' 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 <http://www14.tceq.texas.gov/epic/eComment/>, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. 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 Crockett Martin Corp. at the address stated above or by calling Ms. Shelley Young, P.E., WaterEngineers, Inc., at (281) 373-0500.

Persons with disabilities who need special accommodations at the public 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.

Issuance Date: November 16, 2018

TRD-201805052

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 153717

APPLICATION. El Gato Ready Mix LLC, P.O. Box 38, Jarrell, Texas 76537-0038 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 153717 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 251 County Road 235, Jarrell, Williamson County, Texas 76537. 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=30.812655&lng=-97.663046&zoom=13&type=r>. This

application was submitted to the TCEQ on October 10, 2018. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 26, 2018.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Tuesday, January 29, 2019, at 6:00 p.m.

Events at the Hills Center

70 Park Meadow Drive

Jarrell, Texas 76537

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle, Bldg. A, Rm 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from El Gato Ready Mix, LLC, P.O. Box 38, Jarrell, Texas 76537-0038, or by calling Mr. Daniel Eberhard, Environmental Coordinator, 3 Pro Industrial Services at (409) 289-1466.

Notice Issuance Date: November 21, 2018

TRD-201805050

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 153899

APPLICATION. ATX Liberty Concrete LLC, P.O. Box 151959, Austin, Texas 78715-1959 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 153899 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 9870 North Highway 183, Florence, Williamson County, Texas 76527. 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=30.796213&lng=-97.883443&zoom=13&type=r>. This application was submitted to the TCEQ on October 3, 2018. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on October 26, 2018.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, January 24, 2019, at 6:00 p.m.

Andice Community Center

6600 Farm-to-Market Road 970

Florence, Texas 76527

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment pe-

riod closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle, Bldg. A, Rm 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from ATX Liberty Concrete LLC, P.O. Box 151959, Austin, Texas 78715-1959, or by calling Mr. Daniel Eberhard, Consultant at (409) 289-1466.

Notice Issuance Date: November 20, 2018

TRD-201805049

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018



Notice of District Petition

Notice issued November 15, 2018

TCEQ Internal Control No. D-10012018-001; LGI Homes-Texas, LLC (Petitioner) filed a petition for creation of Cleveland Municipal Utility District 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to all of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 291.421 acres located within Montgomery County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Cleveland, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, industrial and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; and (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner,

from the information available at this time, that the cost of said project will be approximately \$45,450,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201805047

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018



Notice of District Petition

Notice issued November 20, 2018

TCEQ Internal Control No. D-09142018-008; McAlister Opportunity Fund III, L.P. ("Petitioner") filed a petition for creation of Brazoria County Municipal Utility District No. 53 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of all of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 263.88 acres located within Brazoria County, Texas; and (4) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, own, improve, extend,

maintain and operate, inside or outside of its boundaries, a water distribution and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances to provide more adequate drainage for the District, and to control, abate, and amend local storm waters or other harmful excesses of water in the District; and (3) such other purchase, construction, acquisition, ownership, operation, maintenance, repair, improvement, and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioner, from the information available at this time, that the cost of said project will be approximately \$48,933,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201805048

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018



Notice of Hearing URI, INC.: SOAH Docket No. 582-19-1154; TCEQ Docket No. 2018-0319-WDW; Permit No. WDW248

APPLICATION.

URI, Inc. (URI), 641 E. FM 1118, Kingsville, Texas 78363, a uranium mining company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit minor amendment and renewal to authorize disposal of onsite generated nonhazardous wastes produced from groundwater restoration. The facility is located approximately 8 miles southeast of the city of Kingsville, and 4 miles east of the town of Ricardo in Kleberg County. TCEQ received permit applications for WDW247 and WDW248 on November 6, 2015. On August 29, 2016, URI requested the permit application of WDW247 be withdrawn, not yet drilled and let the permit expire. URI requested the following minor amendments to the WDW248 permit: 1) reduce the maximum injection rate from 300 gallons per minute (gpm) to 200 gpm; 2) reduce the average injection rate from 200 gpm to 100 gpm; and 3) reduce the permitted cumulative volume of wastewater injected from 105,120,000 gallons per year to 52,560,000 gallons per year. 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=27.415&lng=-97.780277&zoom=13&type=r>>. For the exact location, refer to the application.

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 that this permit, if issued, meets all statutory and regulatory requirements. The application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the County Clerk's Office, Kleberg County Courthouse, 700 East Kleberg, Kingsville, Texas 78363.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - January 8, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on May 8, 2018. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 27, Texas Water Code; TCEQ rules, including 30 Texas Administrative Code (TAC) Chapter 331 and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of 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.

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 about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>. The mailing address for the TCEQ is P.O. Box 13087, Austin Texas 78711-3087.

Further information may also be obtained from URI, Inc. at the address stated above or by calling Mr. Dain McCoig at (361) 595-5731.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: November 16, 2018

TRD-201805046

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Lake Padre Development Company, LLC: SOAH Docket No. 582-19-1354; TCEQ Docket No. 2017-1553-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - December 20, 2018

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 4, 2018, concerning assessing administrative penalties against and requiring certain actions of Lake Padre Development Company, LLC, for violations in Nueces County, Texas, of: Tex. Health and Safety Code §382.085(a) and (b); Tex. Water Code §§11.081, 11.121, and 26.121; 30 Tex. Admin. Code §§101.4, 101.5, 281.25(a)(4), and 297.11; and 40 C.F.R. §122.26(c).

The hearing will allow Lake Padre Development Company, LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Lake Padre Development Company, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Lake Padre Development Company, LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Lake Padre Development Company, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7, 11, and 26, Tex. Health and Safety Code ch. 382, and 30 Tex. Admin. Code chs. 70, 101, 281, and 297, and 40 C.F.R. Part 122; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: November 27, 2018

TRD-201805051

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018



Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0015686001

APPLICATION. D.R. Horton - Texas, Ltd., 4306 Miller Road, Rowlett, Texas 75088, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015686001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day.

The facility will be located at 5300 Barnes Bridge Road, in Dallas County, Texas 75043. The treated effluent will be discharged directly to Lake Ray Hubbard in Segment No. 0820 of the Trinity River Basin. The designated uses for Segment No. 0820 are high aquatic life use, public water supply, and primary contact recreation. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narra-

tive 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 Lake Ray Hubbard, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.8434&lng=-96.5489&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.

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:

Monday, January 14, 2019, at 7:00 p.m.

Mesquite Convention & Expo Center

Hampton Inn & Suites @ Rodeo Center

1700 Rodeo Drive

Mesquite, Texas 75149

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 <http://www14.tceq.texas.gov/epic/eComment/>. 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.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at South Garland Branch Library, 4845 Broadway Boulevard, Garland, Texas. Further information may also be obtained from D.R. Horton - Texas, Ltd. at the address stated above or by calling Mr. Fred Ramirez, P.E., Jacobs Engineering Group, at (512) 314-3181.

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.

Issuance Date November 20, 2018

TRD-201805045

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on November 15, 2018, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. RA-TE, Inc.; SOAH Docket No. 582-18-2499; TCEQ Docket No. 2015-1823-MWD-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against RA-TE, Inc. 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 Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201805036

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2018



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the 2019 Annual Healthcare Common Procedure Coding System Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 14, 2019, at 1:30 p.m., to receive public comment on proposed Medicaid payment rates for the 2019 Annual Healthcare Common Procedure Coding System (HCPCS) Updates.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and can be accessed on demand at the same website. The public hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the 2019 Annual HCPCS Updates are proposed to be effective January 1, 2019, for the following services:

Physician Administered Drugs - Type of Service (TOS) 1 (Medical Services), TOS S (THSteps Medical);

Medical Services - TOS 1 (Medical Services);
Surgery and Assistant Surgery Services - TOS 2 (Surgery Services) and TOS 8 (Assistant Surgery);
Radiological Services - TOS 4 (Radiology), TOS I (Professional Component), and TOS T (Technical Component);
Nonclinical Laboratory Services - TOS 5 (Laboratory), TOS I (Professional Component), and TOS T (Technical Component);
Clinical Laboratory Services - TOS 5 (Laboratory Services);
Anesthesia Services -TOS 7 (Anesthesia Services);
Durable Medical Equipment, Prosthetics, Orthotics, and Supplies - TOS 9 (Other Medical Items or Services), TOS J (DME Purchase - New), TOS L (DME Rental - Monthly);
Ambulatory Surgical Center - TOS F (Ambulatory Surgical Center);
Audiology - TOS R (Hearing Aid); and
Dental Services - TOS W (Texas Health Steps Dental/Orthodontia).

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8021, which addresses the reimbursement methodology for home health services;

§355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8097, which addresses the reimbursement methodology for physical, occupational, and speech therapy services;

§355.8121, which addresses the reimbursement methodology for ambulatory surgical centers;

§355.8141, which addresses the reimbursement methodology for hearing aid services;

§355.8221, which addresses the reimbursement methodology for certified registered nurse anesthetists and anesthesiology assistants;

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (also known as Texas Health Steps) and the THSteps Comprehensive Care Program (CCP); and

§355.8610, which addresses the reimbursement methodology for clinical laboratory services.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on or after December 20, 2018. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis,

Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance so appropriate arrangements can be made.

TRD-201805030

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 27, 2018



Notice of Public Hearing on Proposed Medicaid Payment Rates for the Residential Care Program, Assisted Living Services, and Personal Care 3 Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 4, 2019, at 9:30 a.m., to receive comment on proposed Medicaid payment rates for the Residential Care (RC) Program, Assisted Living (AL) services, and Personal Care 3 (PC3) services. The proposed rates for the RC program will be utilized in the fee-for-service payment model, and the proposed rates for AL and PC3 services will be utilized in the calculation of the STAR+PLUS managed care capitation rates for the Home and Community-Based Services risk group.

The public hearing will be held in HHSC's Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing but cannot accept testimony from persons watching remotely. The broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>, and it will be archived for access on demand at the same website. The public hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. HHSC proposes to decrease the Service Support cost component for the RC program and for AL and PC3 services to reflect the most recent increase in federal Supplemental Security Income (SSI) payments in accordance with the rate-setting methodologies below. The methodologies require that when SSI is increased, the per diem reimbursement will be decreased in amounts equal to that increase in SSI received by clients. The payment rates are proposed to be effective February 1, 2019.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

Section 355.509(c)(2), which addresses the reimbursement methodology for the RC program;

Section 355.503(c)(2)(B), which addresses the reimbursement methodology for AL services; and

Section 355.503(c)(2)(D), which addresses the reimbursement methodology for PC3 services.

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on or after December 14, 2018. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 424-6637; by fax at (512)

730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 424-

6637 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201805032

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: November 27, 2018

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of October, 2018, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Jacksonville	Jacksonville Hospital L.L.C. dba UT Health East Texas Jacksonville Hospital	L06962	Jacksonville	00	10/24/18
Throughout TX	Enterprise Products	L06963	Mont Belvieu	00	10/25/18

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Anderson	National Oilwell Varco L.P.	L06094	Anderson	17	10/29/18
Arlington	Heartplace P.A.	L06336	Arlington	11	10/16/18
Austin	St. David's Healthcare Partnership L.P., L.L.C. dba St. David's Medical Center	L00740	Austin	161	10/25/18
Austin	Cardinal Health	L02117	Austin	96	10/26/18
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's South Austin Medical Center	L03273	Austin	116	10/26/18
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L06335	Austin	27	10/24/18
Baytown	San Jacinto Methodist Hospital dba Houston Methodist Baytown Hospital	L02388	Baytown	72	10/24/18
Bishop	Ticona Polymers Inc.	L02441	Bishop	61	10/29/18
Corpus Christi	Christus Spohn Health System Corporation dba Christus Spohn Hospital	L02495	Corpus Christi	135	10/25/18
Corpus Christi	True Medical Imaging	L06191	Corpus Christi	09	10/17/18
Dallas	Jubilant Draximage Radiopharmacies Inc. dba Triad Isotopes	L06943	Dallas	01	10/26/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Memorial Campus	L02353	El Paso	138	10/30/18
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence East Campus	L06152	El Paso	30	10/30/18
Fort Worth	Texas Christian University	L01096	Fort Worth	50	10/30/18
Fort Worth	University of North Texas Health Science Center at Fort Worth	L06123	Fort Worth	07	10/22/18
Glen Rose	Somervell County Hospital District dba Glen Rose Medical Center	L06607	Glen Rose	01	10/17/18
Hamilton	Hamilton County Hospital District dba Hamilton General Hospital	L06883	Hamilton	02	10/24/18
Harlingen	VHS Harlingen Hospital Company L.L.C. dba Valley Baptist Medical Center Harlingen	L06499	Harlingen	15	10/25/18
Harlingen	The University of Texas Rio Grande Valley	L06754	Harlingen	04	10/26/18
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	241	10/26/18
Houston	UT Physicians	L05465	Houston	22	10/26/18
Houston	Radiomedix Inc. dba Radiomedix	L06044	Houston	25	10/29/18
Houston	Nisotopes L.L.C.	L06535	Houston	05	10/30/18
Houston	Hotwell US L.L.C.	L06552	Houston	07	10/24/18
Houston	Providence Hospital of North Houston L.L.C.	L06773	Houston	03	10/29/18
Houston	Jubilant Draximage Radiopharmacies Inc. dba Triad Isotopes	L06944	Houston	02	10/26/18
Houston	The Methodist Hospital dba Houston Methodist	L06948	Houston	02	10/22/18
Humble	Cardiovascular Association P.L.L.C.	L05421	Humble	28	10/26/18
Ingleside	The Chemours Company F.C., L.L.C.	L06745	Ingleside	07	10/19/18
Jourdanton	San Miguel Electric Cooperative Inc.	L02347	Jourdanton	31	10/31/18
La Grange	Lower Colorado River Authority	L02738	La Grange	57	10/29/18
McKinney	Baylor Medical Centers at Garland and McKinney dba Baylor Scott & White Medical Center – McKinney	L06470	McKinney	12	10/26/18
Orange	Arlanxeo USA L.L.C.	L06782	Orange	04	10/22/18
Paris	Radiology Center of Paris Ltd.	L05445	Paris	24	10/26/18
Pasadena	Celanese Ltd.	L01130	Pasadena	79	10/24/18
Pasadena	Afton Chemical Corporation	L06740	Pasadena	04	10/17/18
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	168	10/19/18
San Antonio	Trinity University	L01668	San Antonio	56	10/23/18
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	164	10/23/18
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	23	10/17/18
San Antonio	Petnet Solutions Inc.	L05569	San Antonio	35	10/26/18
San Antonio	M M Ontiveros M.D., P.A.	L05675	San Antonio	20	10/23/18
Sugar Land	Stillmeadow Inc.	L04497	Sugar Land	18	10/30/18
Throughout TX	Recon Prototechnologies Oklahoma Inc.	L06839	Alvarado	01	10/17/18
Throughout TX	Team Industrial Services Inc.	L00087	Alvin	249	10/18/18
Throughout TX	Lotus L.L.C.	L05147	Andrews	34	10/22/18
Throughout TX	Texas Department of Transportation	L00197	Austin	189	10/29/18
Throughout TX	Chevron Phillips Chemical Company L.P.	L00962	Baytown	49	10/31/18
Throughout TX	Weatherford International L.L.C.	L04286	Benbrook	124	10/25/18
Throughout TX	Lockheed Martin Corporation dba Lockheed Martin Aeronautics Company	L05633	Fort Worth	18	10/31/18
Throughout TX	The University of Texas Medical Branch	L01299	Galveston	109	10/17/18

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	General Inspection Services Inc.	L02319	Hempstead	51	10/24/18
Throughout TX	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	177	10/26/18
Throughout TX	Geoscience Engineering & Testing Inc.	L05180	Houston	19	10/24/18
Throughout TX	Set Environmental Inc.	L06837	Houston	02	10/31/18
Throughout TX	NDT Texas L.L.C.	L06928	Houston	01	10/30/18
Throughout TX	Munilla Construction Management L.L.C. dba MCM	L06628	Irving	07	10/22/18
Throughout TX	Reliance Oilfield Services L.L.C.	L06884	Midland	01	10/24/18
Throughout TX	Turner Specialty Services L.L.C.	L05417	Nederland	51	10/16/18
Throughout TX	SQS NDT L.P.	L06896	Odessa	04	10/25/18
Throughout TX	Magnum Midstream L.P.	L06885	Pecos	04	10/22/18
Throughout TX	Magnum Midstream L.P.	L06885	Pecos	03	10/16/18
Throughout TX	Pioneer Inspection Services Inc.	L06553	Spring	03	10/31/18

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	Memorial MRI and Diagnostic L.L.C.	L05997	Houston	11	10/31/18
Snyder	Scurry County Hospital District dba DM Cogdell Memorial Hospital	L02409	Snyder	36	10/23/18

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Borger	GPCH L.L.C. dba Golden Plains Community Hospital	L04369	Borger	19	10/16/18
Houston	D-Arrow Inspection Inc.	L03816	Houston	88	10/25/18
Jacksonville	East Texas Medical Center	L00169	Jacksonville	44	10/24/18
Throughout TX	Qualitek L.L.C.	L06564	Houston	03	10/29/18
Throughout TX	Kleinfelder Central Inc.	L01351	Irving	95	10/18/18

TRD-201805055
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: November 28, 2018

TRD-201804996
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: November 21, 2018

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for MEDICARE ADVANTAGE INSURANCE COMPANY OF OMAHA, a foreign Health Maintenance Organization. The home office is in Omaha, Nebraska.

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.

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Texas Lottery Commission

Scratch Ticket Game Number 2105 "Wild Cherry Doubler"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2105 is "WILD CHERRY DOUBLER". The play style is "slots - straight line".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2105 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2105.

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: LEMON SYMBOL, COIN SYMBOL, CLOVER SYMBOL,

BELL SYMBOL, BANANA SYMBOL, GOLD SYMBOL, HORSE-SHOE SYMBOL, RAINBOW SYMBOL, STAR SYMBOL, HEART SYMBOL, CHERRY SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 and \$1,000.

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. 2105 - 1.2D

PLAY SYMBOL	CAPTION
LEMON SYMBOL	LEMON
COIN SYMBOL	COIN
CLOVER SYMBOL	CLOVER
BELL SYMBOL	BELL
BANANA SYMBOL	BANANA
GOLD SYMBOL	GOLD
HORSESHOE SYMBOL	HRSHOE
RAINBOW SYMBOL	RAINBW
STAR SYMBOL	STAR
HEART SYMBOL	HEART
CHERRY SYMBOL	WINX2
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$1,000	ONTH

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-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2105), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2105-0000001-001.

H. Pack - A Pack of the "WILD CHERRY DOUBLER" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. 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 "WILD CHERRY DOUBLER" Scratch Ticket Game No. 2105.

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 "WILD CHERRY DOUBLER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 16 (sixteen) Play Symbols. If a player reveals 3 matching Play Symbols in the same ROW, the player wins the PRIZE for that ROW. If the player reveals a "CHERRY" Play Symbol in any ROW, the player wins DOUBLE the PRIZE for that ROW. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 16 (sixteen) 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 16 (sixteen) 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 16 (sixteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 16 (sixteen) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to four (4) times: once in each ROW.

D. A Prize Symbol will appear a maximum of one (1) time, except when required by the prize structure to create multiple wins.

E. Winning Tickets will contain three (3) matching Play Symbols in the same ROW or will contain two (2) Play Symbols and one (1) "Cherry" (WINX2) Play Symbol in the same ROW.

F. Non-Winning Tickets will never have more than two (2) matching Play Symbols in a ROW.

G. The "Cherry" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

H. The "Cherry" (WINX2) Play Symbol will never appear more than once on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD CHERRY DOUBLER" Scratch Ticket Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00 or \$100, 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 \$40.00, \$50.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD CHERRY DOUBLER" Scratch Ticket Game prize of \$1,000, 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 "WILD CHERRY DOUBLER" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "WILD CHERRY DOUBLER" 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 "WILD CHERRY DOUBLER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2105. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2105 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	780,000	11.54
\$2	660,000	13.64
\$4	190,000	47.37
\$5	80,000	112.50
\$8	40,000	225.00
\$10	30,000	300.00
\$20	40,000	225.00
\$40	5,000	1,800.00
\$50	3,050	2,950.82
\$100	3,175	2,834.65
\$1,000	50	180,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.91. 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. 2105 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2105, 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-201805011
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 26, 2018



Scratch Ticket Game Number 2112 "50X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2112 is "50X". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2112 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2112.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 10X SYMBOL, 20X SYMBOL, 50X SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$250, \$500, \$1,000, \$5,000 and \$200,000.

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. 2112 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI

40	FRTY
10X SYMBOL	WINX10
20X SYMBOL	WINX20
50X SYMBOL	WINX50
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FIFTY\$
\$100	ONHN
\$250	TOFF
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$200,000	200TH

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-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2112), 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: 2112-0000001-001.

H. Pack - A Pack of the "50X" Scratch Ticket Game contains 075 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 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "50X" Scratch Ticket Game No. 2112.

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" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. If the player reveals a "50X" Play Symbol, the player wins 50 TIMES the PRIZE for that symbol. 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 45 (forty-five) 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 45 (forty-five) 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 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and \$5).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. No matching WINNING NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never match a winning Prize Symbol.

G. A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. The "20X" (WINX20) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. The "50X" (WINX50) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "50X" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$100, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "50X" Scratch Ticket Game prize of \$1,000, \$5,000 or \$200,000, 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" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "50X" 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" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with

an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "50X" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 20,040,000 Scratch Tickets in Scratch Ticket Game No. 2112. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2112 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	2,271,200	8.82
\$10	1,603,200	12.50
\$20	400,800	50.00
\$25	400,800	50.00
\$50	200,400	100.00
\$100	50,100	400.00
\$250	8,350	2,400.00
\$500	4,175	4,800.00
\$1,000	180	111,333.33
\$5,000	15	1,336,000.00
\$200,000	9	2,226,666.67

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.06. 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. 2112 without advance notice. Scratch Tickets may not be sold after the closing date. 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. 2112, 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-201805025
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 27, 2016



Scratch Ticket Game Number 2113 "100X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2113 is "100X". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2113 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2113.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 10X SYMBOL, 20X SYMBOL, 100X SYMBOL, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000, \$50,000 and \$500,000.

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. 2113 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI

40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
10X SYMBOL	WINX10
20X SYMBOL	WINX20
100X SYMBOL	WINX100
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$50,000	50TH
\$500,000	500TH

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-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2113), 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: 2113-0000001-001.

H. Pack - A Pack of the "100X" 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 "100X" Scratch Ticket Game No. 2113.

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 "100X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 56 (fifty-six) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. If the player reveals a "100X" Play Symbol, the player wins 100 TIMES the PRIZE for that symbol. 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 56 (fifty-six) 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 56 (fifty-six) 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 56 (fifty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 56 (fifty-six) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 15 and \$15).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

E. No matching WINNING NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never match a winning Prize Symbol.

G. A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. The "20X" (WINX20) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. The "100X" (WINX100) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "100X" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "100X" Scratch Ticket Game prize of \$1,000, \$10,000, \$50,000 or \$500,000, 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 "100X" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the

claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "100X" 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 "100X" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "100X" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the

Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 13,080,000 Scratch Tickets in Scratch Ticket Game No. 2113. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2113 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	1,569,600	8.33
\$20	784,800	16.67
\$30	523,200	25.00
\$50	392,400	33.33
\$100	130,800	100.00
\$200	18,530	705.88
\$500	4,360	3,000.00
\$1,000	654	20,000.00
\$10,000	8	1,635,000.00
\$50,000	4	3,270,000.00
\$500,000	6	2,180,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. 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. 2113 without advance notice. Scratch Tickets may not be sold after the closing date. 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. 2113, 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-201805026
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 27, 2018



Scratch Ticket Game Number 2114 "300X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2114 is "300X". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2114 shall be \$30.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2114.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02,

03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 10X SYMBOL, 20X SYMBOL, 300X SYMBOL, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$300, \$500, \$1,000, \$5,000, \$15,000, \$100,000 and \$3,000,000.

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. 2114 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI

40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
10X SYMBOL	WINX10
20X SYMBOL	WINX20
300X SYMBOL	WINX300
\$20.00	TWY\$
\$25.00	TWFV\$
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$300	THHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$15,000	15 TH
\$100,000	100 TH
\$3,000,000	TPPZ

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-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2114), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2114-0000001-001.

H. Pack - A Pack of the "300X" Scratch Ticket Game contains 025 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 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

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 "300X" Scratch Ticket Game No. 2114.

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 "300X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 68 (sixty-eight) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. If the player reveals a "300X" Play Symbol, the player wins 300 TIMES the PRIZE for that symbol. 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 68 (sixty-eight) 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 68 (sixty-eight) 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 68 (sixty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 68 (sixty-eight) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 50 and \$50).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

E. No matching WINNING NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never match a winning Prize Symbol.

G. A Ticket may have up to six (6) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. The "20X" (WINX20) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. The "300X" (WINX300) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "300X" Scratch Ticket Game prize of \$50.00, \$75.00, \$100, \$300 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, \$75.00, \$100, \$300 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "300X" Scratch Ticket Game prize of \$1,000, \$5,000, \$15,000 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. To claim a "300X" Scratch Ticket Game top level prize of \$3,000,000, the claimant must sign the winning Scratch Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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.

D. As an alternative method of claiming a "300X" 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.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

F. 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.

G. 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 "300X" 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 "300X" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights

to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "300X" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned

by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2114. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2114 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$50	900,000	6.67
\$75	240,000	25.00
\$100	337,500	17.78
\$300	67,500	88.89
\$500	10,000	600.00
\$1,000	400	15,000.00
\$5,000	8	750,000.00
\$15,000	5	1,200,000.00
\$100,000	3	2,000,000.00
\$3,000,000	3	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 3.86. 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. 2114 without advance notice. Scratch Tickets may not be sold after the closing date. 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. 2114, 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-201805027
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: November 27, 2018



Scratch Ticket Game Number 2135 "Million Dollar Loteria"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2135 is "MILLION DOLLAR LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2135 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2135.

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: THE MOCKINGBIRD SYMBOL, THE CACTUS SYMBOL, THE STRAWBERRY SYMBOL, THE ROADRUNNER SYMBOL, THE BAT SYMBOL, THE PIÑATA SYMBOL, THE COWBOY SYMBOL, THE NEWSPAPER SYMBOL, THE SUNSET SYMBOL, THE COWBOY HAT SYMBOL, THE COVERED WAGON SYMBOL, THE MARACAS SYMBOL, THE LONE STAR SYMBOL, THE

CORN SYMBOL, THE HEN SYMBOL, THE SPEAR SYMBOL, THE GUITAR SYMBOL, THE FIRE SYMBOL, THE MORTAR PESTLE SYMBOL, THE WHEEL SYMBOL, THE PECAN TREE SYMBOL, THE JACKRABBIT SYMBOL, THE BOAR SYMBOL, THE ARMADILLO SYMBOL, THE LIZARD SYMBOL, THE CHILE PEPPER SYMBOL, THE HORSESHOE SYMBOL, THE HORSE SYMBOL, THE SHOES SYMBOL, THE BLUEBONNET SYMBOL, THE CHERRIES SYMBOL, THE OIL RIG SYMBOL, THE MOONRISE SYMBOL, THE RATTLESNAKE SYMBOL, THE WINDMILL SYMBOL, THE SPUR SYMBOL, THE SADDLE SYMBOL, THE GEM SYMBOL, THE DESERT SYMBOL, THE SOCCERBALL SYMBOL, THE FOOTBALL SYMBOL, THE COW SYMBOL, THE BICYCLE SYMBOL, THE RACE CAR SYMBOL, THE BUTTERFLY SYMBOL, THE CARDINAL SYMBOL, THE SHIP SYMBOL, STAR SYMBOL, MONEYBAG SYMBOL, COINS SYMBOL, HEART SYMBOL, CHECK SYMBOL, GOLD BAR SYMBOL, STACK OF BILLS SYMBOL, VAULT SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$5,000, \$20,000 and \$1,000,000.

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. 2135 - 1.2D

PLAY SYMBOL	CAPTION
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE CACTUS SYMBOL	THE CACTUS
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE BAT SYMBOL	THE BAT
THE PIÑATA SYMBOL	THE PIÑATA
THE COWBOY SYMBOL	THECOWBOY
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE SUNSET SYMBOL	THE SUNSET
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE MARACAS SYMBOL	THEMARACAS
THE LONE STAR SYMBOL	THELONESTAR
THE CORN SYMBOL	THE CORN
THE HEN SYMBOL	THE HEN
THE SPEAR SYMBOL	THE SPEAR
THE GUITAR SYMBOL	THE GUITAR
THE FIRE SYMBOL	THE FIRE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE WHEEL SYMBOL	THE WHEEL
THE PECAN TREE SYMBOL	THEPECANTREE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE BOAR SYMBOL	THE BOAR
THE ARMADILLO SYMBOL	THEARMADILLO
THE LIZARD SYMBOL	THELIZARD
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE HORSESHOE SYMBOL	THEHORSESHOE
THE HORSE SYMBOL	THE HORSE

THE SHOES SYMBOL	THE SHOES
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE CHERRIES SYMBOL	THECHERRIES
THE OIL RIG SYMBOL	THEOILRIG
THE MOONRISE SYMBOL	THE MOONRISE
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE WINDMILL SYMBOL	THEWINDMILL
THE SPUR SYMBOL	THE SPUR
THE SADDLE SYMBOL	THESADDLE
THE GEM SYMBOL	THE GEM
THE DESERT SYMBOL	THE DESERT
THE SOCCERBALL SYMBOL	THESOCCERBALL
THE FOOTBALL SYMBOL	THEFOOTBALL
THE COW SYMBOL	THE COW
THE BICYCLE SYMBOL	THE BICYCLE
THE RACE CAR SYMBOL	THERACECAR
THE BUTTERFLY SYMBOL	THEBUTTERFLY
THE CARDINAL SYMBOL	THECARDINAL
THE SHIP SYMBOL	THE SHIP
STAR SYMBOL	STAR
MONEYBAG SYMBOL	MONEYBAG
COINS SYMBOL	COINS
HEART SYMBOL	HEART
CHECK SYMBOL	CHECK
GOLD BAR SYMBOL	GOLD BAR
STACK OF BILLS SYMBOL	STACKOFBILLS
VAULT SYMBOL	VAULT
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
\$10.00	TEN\$
\$20.00	TWY\$
\$30.00	TRTY\$
\$40.00	FRTY\$
\$50.00	FFTY\$

\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$5,000	FVTH
\$20,000	20 TH
\$1,000,000	TPPZ

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-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2135), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2135-0000001-001.

H. Pack - A Pack of the "MILLION DOLLAR LOTERIA" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MILLION DOLLAR LOTERIA" Scratch Ticket Game No. 2135.

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 "MILLION DOLLAR LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 78 (seventy-eight) Play Symbols. PLAYBOARD 1: 1) The player scratches the CALLER'S CARD area to reveal 27 symbols. 2) The player scratches ONLY the symbols on the PLAYBOARD that exactly match the symbols

revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. PLAYBOARD 2: The player scratches ONLY the symbols on each PLAYBOARD that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals all 4 symbols in a column, the player wins the PRIZE for that column. PLAY AREA 3 (BONUS GAMES): The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in any one GAME, the player wins the PRIZE for the GAME. PLAY AREA 4 (BONUS): If the player reveals 2 matching symbols in the BONUS \$100, the player wins \$100. If the player reveals 2 matching symbols in the BONUS \$200, the player wins \$200. TABLA DE JUEGO 1: 1) El jugador raspa la CARTA DEL GRITÓN para revelar 27 símbolos. 2) El jugador raspa SOLAMENTE los símbolos en la TABLA DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa horizontal, vertical o diagonal, el jugador gana el premio para esa línea. TABLA DE JUEGO 2: El jugador SOLAMENTE raspa los símbolos en cada de las TABLAS DE JUEGO que son exactamente iguales a los símbolos revelados in la CARTA DEL GRITÓN. Si el jugador revela todos los 4 símbolos en una columna, el jugador gana el PREMIO para esa columna. ÁREA DE JUEGO 3 (JUEGOS DE BONO): El jugador SOLAMENTE raspa los símbolos en los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en un mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. ÁREA DE JUEGO 4 (BONO): Si el jugador revela 2 símbolos iguales en el área de BONO \$100, el jugador gana \$100. Si el jugador revela 2 símbolos iguales en el área de BONO \$200, el jugador gana \$200. 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 78 (seventy-eight) 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 78 (seventy-eight) 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 78 (seventy-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 78 (seventy-eight) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas

Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to fourteen (14) times in accordance with the approved prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAYBOARD 1/TABLA DE JUEGO 1: No matching Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARD 1/TABLA DE JUEGO 1: At least eight (8) but no more than twelve (12) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on the PLAYBOARD 1/TABLA DE JUEGO 1 play area.

E. PLAYBOARD 1/TABLA DE JUEGO 1: CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will have a random distribution on the Ticket, unless restricted by other parameters, play action or prize structure.

F. PLAYBOARD 1/TABLA DE JUEGO 1: No matching Play Symbols are allowed on the same PLAYBOARD 1/TABLA DE JUEGO 1 play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$40.00, \$50.00, \$100, \$150, \$200, \$250 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize of \$1,000, \$5,000, \$20,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MILLION DOLLAR LOTERIA" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas

Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MILLION DOLLAR LOTERIA" 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 "MILLION DOLLAR LOTERIA" Scratch

Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2135. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2135 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	720,000	8.33
\$30	420,000	14.29
\$40	120,000	50.00
\$50	240,000	25.00
\$100	216,000	27.78
\$150	48,000	125.00
\$200	31,450	190.78
\$250	15,600	384.62
\$500	2,800	2,142.86
\$1,000	400	15,000.00
\$5,000	80	75,000.00
\$20,000	10	600,000.00
\$1,000,000	5	1,200,000.00

*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 3.31. 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. 2135 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2135, 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-201805012

Bob Biard

General Counsel

Texas Lottery Commission

Filed: November 26, 2018



Public Utility Commission of Texas

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 October 18, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of ECP Controlco, LLC Under §39.158 of the Public Utility Regulatory Act, Docket Number 48797.

The Application: ECP Controlco, LLC filed an application for approval of the sale of 6.43% of the passive limited partnership interests in Volt Parent, LP, which is the indirect owner of Calpine Corporation, an owner of power generation facilities located in various counties, to China Investment Corporation (CIC) through its indirect subsidiary Beijing Hanguang Investment Corporation. CIC, through its indirect subsidiary Fengmao Investment Corporation, has an indirect interest in approximately 6% of EIF Channelview Cogeneration, LLC, another owner of power generation facilities in Texas. CIC, Fengmao, and Beijing Hanguang are all corporations formed in the People's Republic of China. Calpine Corporation is a wholly-controlled subsidiary of ECP. The power generation facilities in Calpine's portfolio are interconnected to the Electric Reliability Council of Texas (ERCOT). The combined generation owned and controlled by Calpine and its affiliates

following the proposed sale will not exceed 20% of the total installed electric generation capacity located in or capable of delivery into ER-COT.

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 48797.

TRD-201805044
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2018



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 20, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Harper Water Company, Inc. and Aqua Texas, Inc. for Approval of a Sale, Transfer, or Merger of Facilities and Certificate Rights in Gillespie and Kerr Counties, Docket Number 48896.

The Application: Harper Water Company, Inc. and Aqua Texas, Inc. seek to transfer all of Harper Water Company's facilities and water service area under water certificate of convenience and necessity number 11421 to Aqua Texas. The requested transfer includes approximately 932 acres and 813 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 48896.

TRD-201805053
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2018



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 20, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Kerrville South Water Company, Inc. and Aqua Texas, Inc. for Approval of a Sale, Transfer, or Merger of Facilities and Certificate Rights in Kerr County, Docket Number 48897.

The Application: Kerrville South Water Company, Inc. and Aqua Texas, Inc. seek to transfer all of Kerrville South Water Company's

facilities and water service area under water certificate of convenience and necessity number 11484 to Aqua Texas. The requested transfer includes approximately 3,671 acres and 1,298 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 48897.

TRD-201805054
Adriana Gonzales
Rules Coordinator
Public Utilities Commission of Texas
Filed: November 28, 2018



Notice of Application to Amend Certificates of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 14, 2018, to amend certificates of convenience and necessity (CCN).

Docket Style and Number: Application of Ponder Enterprises, Inc. and Aqua Texas, Inc. for Approval of a Service Area Contract Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Denton County, Docket Number 48883.

The Application: Ponder Enterprises, Inc. and Aqua Texas, Inc. (applicants) seek commission approval of a service area contract under Texas Water Code §13.248 and to amend CCN numbers 12810 and 13210 in Denton County. The service area contract transfers a portion of the service area held by Aqua Texas under CCN number 13210 to Ponder Enterprises to be included under CCN number 12810. The applicants request that their CCNs be amended to reflect the transfer of service area as agreed to in the contract. Ponder Enterprises currently serves the transferred service area; thus no customers will be transferred from Aqua Texas to Ponder Enterprises.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 935-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48883.

TRD-201804973
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2018



Notice of Application to Amend Certificates of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 19, 2018, to amend certificates of convenience and necessity (CCN).

Docket Style and Number: Application of the City of Celina and Marilee Special Utility District for Approval of a Service Area Contract Under Texas Water Code §13.248 and to Amend Certificates of Convenience and Necessity in Collin County, Docket Number 48891.

The Application: The City of Celina and Marilee SUD (applicants) seek commission approval of a service area contract under Texas Water Code §13.248 and to amend CCN numbers 12667 and 10150 in Denton County. The City of Celina holds CCN number 12667 and Marilee SUD holds CCN number 10150. The applicants seek commission approval of a service area contract which provides for an exchange of portions of the service areas subject to the applicants' respective CCNs. The applicants request that their CCNs be amended to reflect the transfer of service areas as agreed to in the Fourth Addendum to the Full and Final Settlement Agreement and Release, attached to the application. The service areas the applicants have contracted to exchange consist of approximately 2,254.74 acres and no customers.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 935-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48891.

TRD-201805058
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2018

◆ ◆ ◆
Sam Houston State University

Award Consulting for Office of Research Administration to
Maximus Higher Education
Maximus Higher Education, Inc.
P.O. Box 791188
Baltimore, Maryland 21279
\$32,500.00 Total

Start Date: 11/19/2018

End Date: 06/30/2020

Consultant to aid the University with the preparation, submission, and negotiation of the Short Form Facilities and Administration (F&A) cost proposal, serve as support services related to policies and best practices, and assist with the rate calculation process.

Documents due to agency February 28, 2019

TRD-201804988
Rhonda Beassie
Assistant General Counsel, Texas State University System
Sam Houston State University
Filed: November 19, 2018

◆ ◆ ◆
Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html; or visit www.txdot.gov, and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule; or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or (800) 68-PILOT.

TRD-201804995
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 21, 2018

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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