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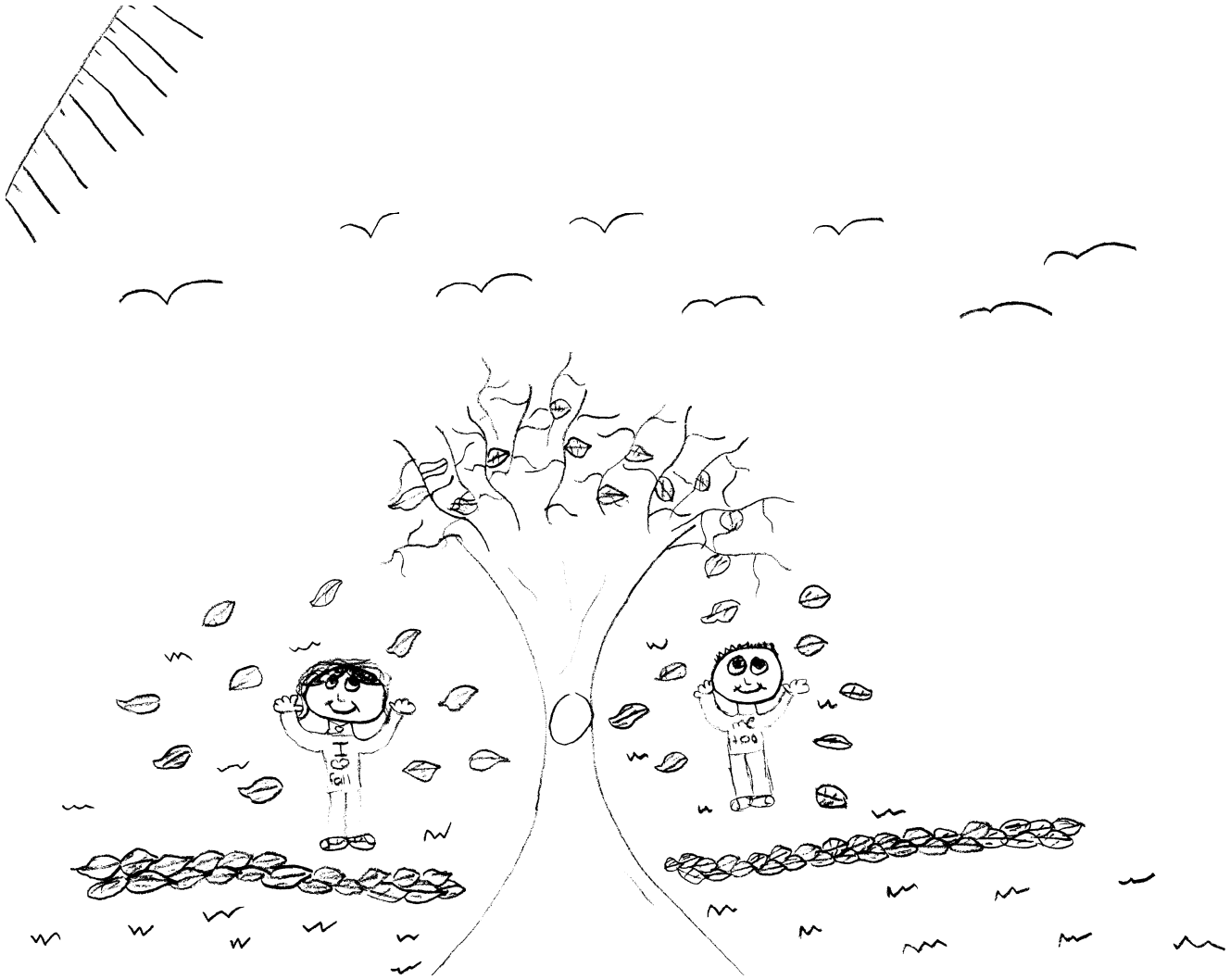

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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In This Issue

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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §§3.25 - 3.27

The Railroad Commission of Texas (Commission) proposes to amend §3.25, relating to Use of Common Storage; §3.26, relating to Separating Devices, Tanks, and Surface Commingling of Oil; and §3.27, relating to Gas To Be Measured and Surface Commingling of Gas.

The Commission proposes the amendments to §3.26 and §3.27 to change when an operator must apply for a rule exception by filing Form P-17. Currently, any operator who seeks to surface commingle production from two or more tracts of land producing from the same Commission-designated reservoir or from one or more tracts of land producing from different Commission-designated reservoirs must obtain an exception. The operator may receive an exception administratively by filing Form P-17, paying the associated exception fee of $150, and complying with any applicable notice requirements. An approved P-17 is referred to as a commingle permit and has a unique permit number.

The proposed amendments in new §3.26(b) would specify two instances in which an exception is no longer required: (1) where the operator measures the production stream from each tract and each Commission-designated reservoir separately before combining it with a stream from another tract or Commission-designated reservoir; and (2) the tracts and Commission-designated reservoirs have identical working interest and royalty interest ownership in identical percentages. In these instances, an operator would still be required to apply for a commingle permit and comply with all applicable commingling rules but would not be required to provide notice or pay the exception fee. Concurrent with the proposed rule amendments, the Commission will propose new Form P-17A, Application for Commingle Permit Pursuant to Rules 26 and/or 27. An operator who falls into one of the instances in which an exception is no longer required would file the Form P-17A to obtain a commingle permit.

The proposed amendments to §3.26(c) clarify that if production is commingled pursuant to §3.26(b), the commingling is authorized even if separation, metering, or storage is located off the relevant tract or tracts. Subsection (c) also clarifies that Form P-17A is required for operators who apply for a commingle permit under §3.26(b).

Operators who seek to surface commingle but do not meet §3.26(b) would still be required to seek an exception by filing Form P-17, which would be revised to reflect the rule amendments. Therefore, the Commission proposes corresponding amendments to §3.26(d), requiring an administrative exception when the tracts proposed for commingling do not have identical working interest and royalty interest ownership in identical percentages. The Commission also proposes amendments to subsection (d) to decrease the notice by publication requirement from once a week for four consecutive weeks to once a week for two consecutive weeks.

The proposed amendments to §3.26(d)(4) and new subsection (e) remove notice requirements from §3.26 that are already covered by §3.10, relating to Restriction of Production of Oil and Gas from Different Strata.

The proposed amendments to §3.26(f) require an operator to review and correct any forms related to its commingle permit as necessary in order to maintain accurate information on file with the Commission. The proposed amendments would also move language from current §3.26(b)(4) to new subsection (g) to clarify that if commingling from a reservoir that has field rules regarding commingling, the operator must comply with the field rule requirements, including any additional notice requirements.

The Commission proposes amendments to §3.25 and §3.27 to reflect the changes to §3.26. The proposed amendments to §3.25 clarify that common storage is authorized as long as an operator complies with the requirements in §3.26 and §3.27. The proposed amendments to §3.27 authorize surface commingling if done in accordance with §3.26. Other proposed amendments in §§3.25 - 3.27 are non-substantive clarifications.

Jason Clark, Assistant Director of Administrative Compliance, Oil & Gas Division, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be no fiscal effect on local government. The Commission will incur a one-time cost of approximately $27,775 for programming modifications necessary to reflect the proposed rule amendments and corresponding form changes. However, rule and form clarification could save staff an estimated 1141 hours per year - time staff currently spends resolving issues created by inconsistencies between rule language and applicable forms and contradictory instructions within the Form P-17.

Mr. Clark has determined that for the first five years the proposed amendments are in effect, the primary public benefit will be clarification of rule language and related forms related to surface commingling. The existing Form P-17 is inconsistent with the rule language and creates confusion for operators and those who receive notice pursuant to rule requirements.

Mr. Clark has determined that for each year of the first five years that the amendments will be in effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed amendment. The regulated industry would see a savings of $150 per commingling permit application filed pursuant

to new §3.26(b) because a rule exception would no longer be required.

The Commission has determined that the proposed amendments to §§3.25 - 3.27 will not have an adverse economic effect on rural communities, small businesses or micro businesses. As noted above, there is no anticipated additional cost for any person required to comply with the proposed amendments. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rules would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or effect the state's economy. The proposed amendments would decrease fees paid to the agency. Because the amendments would authorize commingling in two instances where an exception is currently required, the Commission would receive less exception applications and, therefore, less exception fees.

Comments on the proposed amendment may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Wednesday, January 2, 2019. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Clark at (512) 463-2655. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

The Commission proposes the amendments to §§3.25 - 3.27 pursuant to Texas Natural Resources Code §85.046, which grants the Commission broad discretion in permitting the commingling of production of oil or gas or oil and gas from two or more tracts of land producing from the same reservoir or from one or more tracts of land producing from different reservoirs; Texas Natural Resources Code §§81.051 - 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; Texas Natural Resources Code §§85.201 - 85.202, which require the Commission to adopt and enforce rules and orders for the conservation and prevention of waste of oil and gas, and specifically for drilling of wells, preserving a record of the drilling of wells, and requiring records to be kept and reports to be made; and Texas Natural Resources Code §§86.041 - 86.042, which give the Commission broad discretion in administering the provisions of Chapter 86 of the Code, authorize the Commission, generally, to adopt any rule or order necessary to effectuate the provisions and purposes Chapter 86, and require the Commission to adopt and enforce rules and orders to conserve and prevent the waste of gas, provide for drilling wells and preserving a record of them, require wells to be drilled and operated in a manner that prevents injury to adjoining property, and require records to be kept and reports to be made.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.046, 85.201, 85.202, 86.041, and 86.042.

Cross reference to statute: §§81.051, 81.052, 85.046, 85.201, 85.202, 86.041, and 86.042.

§3.25. Use of Common Storage.

(a) Where [~~In all fields or areas in which the commission has approved the use of common storage where~~] oil and/or other liquid hydrocarbons are [~~is~~] produced from two or more separate reservoirs or zones and separate proration schedules are published by the Commission [~~commission~~] for each reservoir or zone, the use of common storage is authorized as long as the requirements of §3.26 and §3.27 of this title (relating to Separating Devices, Tanks, and Surface Commingling of Oil, and Gas to be Measured and Surface Commingling of Gas, respectively) are met. An [~~the~~] operator utilizing common storage pursuant to this section [~~of said lease~~] shall not be required to file a separate Form P-4, [~~Producer's~~] Certificate of Compliance and Transportation Authority, [~~Authorization to Transport Oil or Gas From Lease Form~~] for each reservoir or zone, but may file one form to authorize the transportation of oil or gas from all reservoirs or zones producing into common storage.

(b) A gatherer transporting oil from such common storage shall not be required to file a separate transporter's report for each separate reservoir or zone or each separate lease but shall file such report on a combined basis for the total amount of commingled oil in common storage.

(c) The operator of a lease or leases for which the Commission [~~commission~~] has authorized the use of common storage of oil produced from two or more reservoirs or zones and from two or more leases shall file Form PR, Monthly Production Report, for each separate reservoir or zone and/or for each separate lease and, in addition thereto, said operator shall file a report showing the data included on the individual reports on a combined basis for the total amount of commingled oil in common storage.

§3.26. Separating Devices, Tanks, and Surface Commingling of Oil.

(a) Where oil and gas are found in the same stratum and it is impossible to separate one from the other, or when a well has been classified as a gas well and such gas well is not connected to a cycling plant and such well is being produced on a lease and the gas is utilized under Texas Natural Resources Code §§86.181 - 86.185, the operator shall install a separating device of approved type and sufficient capacity to separate the oil and liquid hydrocarbons from the gas.

(1) A [~~The~~] separating device shall be kept in place as long as a necessity for it exists, and its use shall not be [~~, after being installed, such device shall not be removed nor the use thereof~~] discontinued without the consent of the Commission [~~commission~~].

(2) All oil and any other liquid hydrocarbons as and when produced shall be adequately measured pursuant to paragraphs (3) and

(4) of this subsection [according to the pipeline rules and regulations of the commission] before the same leaves the lease from which they are produced, except for gas wells where the full well stream is moved to a plant or central separation facility in accordance with §3.55 of this title (relating to Reports on Gas Wells Commingling Liquid Hydrocarbons before Metering) (Statewide Rule 55) and the full well stream is measured, with each completion being separately measured, before the gas leaves the lease. If an operator commingles production pursuant to subsection (b) of this section, the operator shall comply with paragraphs (3) and (4) of this subsection but the operator is not required to measure the production stream before it leaves the lease.

(3) Sufficient tankage and separator capacity shall be provided by the producer to adequately take daily gauges of all oil and any other liquid hydrocarbons unless LACT equipment, installed and operated in accordance with the latest revision of American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 6.1 or another method approved by the Commission [commission] or its delegate, is being used to effect custody transfer.

(4) For Commission [commission] purposes, the measurement requirements of this section are satisfied by the use of coriolis or turbine meters or any other measurement device or technology that conforms to standards established, as of the time of installation, by the American Petroleum Institute (API) or the American Gas Association (AGA) for measuring oil or gas, as applicable, or approved by the Director of the Oil and Gas Division as an accurate measurement technology.

(b) Surface commingling of oil, gas, or oil and gas production from two or more tracts of land producing from the same Commission-designated reservoir or from one or more tracts of land producing from different Commission-designated reservoirs is permitted and authorized if:

(1) the operator measures the production stream from each tract and each Commission-designated reservoir separately before combining it with a stream from another tract or Commission-designated reservoir; or

(2) the tracts and Commission-designated reservoirs have identical working interest and royalty interest ownership in identical percentages.

(c) Production that complies with subsection (b) of this section is authorized even if the separator, metering, or storage is located off the tract or tracts. If production is surface commingled pursuant to subsection (b) of this section, the operator shall file Form P-17A, Application for Commingle Permit Pursuant to Rules 26 and/or 27.

(d) [(b)] If an operator does not meet the requirements of subsection (b) of this section [In order to prevent waste, to promote conservation or to protect correlative rights], the Commission [commission] may approve surface commingling of oil, gas, or oil and gas production from two or more tracts of land producing from the same Commission-designated [commission-designated] reservoir or from one or more tracts of land producing from different Commission-designated [commission-designated] reservoirs in order to prevent waste, to promote conservation, or to protect correlative rights.[as follows:]

(1) Administrative approval. After receipt of a completed Form P-17, the Commission [Upon written application, the commission] may grant approval for surface commingling administratively when [any one of the following conditions is met:

[(A) The tracts or commission-designated reservoirs have identical working interest and royalty interest ownership in identical percentages and therefore there is no commingling of separate interests;]

[(B) Production from each tract and each commission-designated reservoir is separately measured and therefore there is no commingling of separate interests; or]

[(C) When] the tracts or Commission-designated [commission-designated] reservoirs do not have identical working interest and royalty interest ownership in identical percentages and the Commission [commission] has not received a protest to an application within 21 days of notice of the application being mailed by the applicant to all working and royalty interest owners or, if publication is required, within 21 days of the date of last publication and the applicant provides:

(A) [(i)] a method of allocating production to ensure the protection of correlative rights, in accordance with paragraph (3) of this subsection; and

(B) [(ii)] an affidavit or other evidence that all working interest and royalty interest owners have been notified of the application by certified mail or have provided applicant with waivers of notice requirements; or

(C) [(iii)] in the event the applicant is unable, after due diligence, to provide notice by certified mail to all working interest and royalty interest owners, a publisher's affidavit or other evidence that the Commission's [commission's] notice of application has been published once a week for two [four] consecutive weeks in a newspaper of general circulation in the county or counties in which the tracts that are the subject of the application are located.

(2) Request for hearing. When the tracts or Commission-designated [commission-designated] reservoirs do not have identical working interest and royalty interest ownership in identical percentages and a person entitled to notice of the application has filed a protest to the application with the Commission [commission], the applicant may request a hearing on the application. The Commission [commission] shall give notice of the hearing to all working interest and royalty interest owners. The Commission [commission] may permit the commingling if the applicant demonstrates that the proposed commingling will protect the rights of all interest owners in accordance with paragraph (3) of this subsection and will prevent waste, promote conservation or protect correlative rights.

(3) Reasonable allocation required. The applicant must demonstrate to the Commission or its designee that the proposed commingling of hydrocarbons will not harm the correlative rights of the working or royalty interest owners of any of the wells to be commingled. The method of allocation of production to individual interests must accurately attribute to each interest its fair share of aggregated production.

(A) In the absence of contrary information, such as indications of material fluctuations in the monthly production volume of a well proposed for commingling, the Commission will presume that allocation based on the daily production rate for each well as determined and reported to the Commission by semi-annual well tests will accurately attribute to each interest its fair share of production without harm to correlative rights. As used in this section, "daily production rate" for a well means the 24 hour production rate determined by the most recent well test conducted and reported to the Commission [commission] in accordance with §§3.28, 3.52, 3.53, and 3.55 of this title (relating to Potential and Deliverability of Gas Wells to be [To Be] Ascertained and Reported, Oil Well Allowable Production, Annual Well Tests and Well Status Reports Required, and Reports on Gas Wells Commingling Liquid Hydrocarbons before Metering).

(B) Operators may test commingled wells annually after approval by the Commission or the Commission's [~~commission's~~] delegate of the operator's written request demonstrating that annual testing will not harm the correlative rights of the working or royalty interest owners of the commingled wells. Allocation of commingled production shall not be based on well tests conducted less frequently than annually.

(C) Nothing in this section prohibits allocations based on more frequent well tests than the semi-annual well test set out in subparagraph (A) of this paragraph. Additional tests used for allocation do not have to be filed with the Commission [~~commission~~] but must be available for inspection at the request of the Commission [~~commission~~], working interest owners or royalty interest owners.

(D) Allocations may be based on a method other than periodic well tests if the Commission or its designee determines that the alternative allocation method will insure a reasonable allocation of production as required by this paragraph.

[~~(4) Additional notice required. In addition to giving notice to the persons entitled to notice under paragraph (1)(C) of this subsection, an applicant for a surface commingling exception must give notice of the application to the operator of each tract adjacent to one or more of the tracts proposed for commingling that has one or more wells producing from the same commission-designated reservoir as any well proposed for commingling if:~~]

[~~(A) any one of the wells proposed for commingling produces from a commission-designated reservoir for which special field rules have been adopted; or~~]

[~~(B) any one of the wells proposed for commingling produces from multiple commission-designated reservoirs, unless:~~]

~~(i)~~ ~~an exception to §3.10 of this title (relating to Restriction of Production of Oil and Gas from Different Strata) has previously been obtained for production from the well; or~~]

~~(ii)~~ ~~the applicant continues to separately measure production from each different commission-designated reservoir produced from the same wellbore.~~]

(e) An operator that commingles production from different Commission-designated reservoirs, whether under subsection (b) or (c) of this section, shall comply with §3.10 of this title (relating to Restriction of Production of Oil and Gas from Different Strata).

(f) An operator that commingles production, whether under subsection (b) or (c) of this section, shall review and correct any forms related to its commingle permit as necessary in order to maintain accurate information on file with the Commission.

(g) An operator that surface commingles production from two or more tracts of land producing from the same Commission-designated reservoir or from one or more tracts of land producing from different Commission-designated reservoirs shall comply with any field rules regarding surface commingling, including any notice requirements.

(h) [~~(e)~~] If oil or any other liquid hydrocarbon is produced from a lease or other property covered by the coastal or inland waters of the state, the liquid produced may, at the option of the operator, be measured on a shore or at a point removed from the lease or other property on which it is produced.

(i) [~~(d)~~] Oil gravity tests and reports (Reference Order Number 20-55, 647, effective 4-1-66, and Reference Order Number 20-58, 528, effective 5-10-68.)

(1) Where individual lease oil production, or authorized commingled oil production, separator, treating, and/or storage vessels, other than conventional emulsion breaking treaters, are connected to a gas gathering system so that heat or vacuum may be applied prior to oil measurement for Commission-required [~~commission-required~~] production reports, the operator may, at the operator's [~~his~~] option, apply heat or vacuum to the oil only to the extent the average gravity of the stock tank oil will not be reduced below a limiting gravity for each lease as established by an average oil gravity test conducted under the following conditions (Reference Order Number 20-55, 647, effective 4-1-66):

(A) the separator or separator system, which shall include any type vessel that is used to separate hydrocarbons, shall be operated at not less than atmospheric pressure;

(B) no heat shall be applied;

(C) the test interval shall be for a minimum of 24 hours, and the average oil gravity after weathering for not more than 24 hours shall then become the limiting gravity factor for applying heat or vacuum to unmeasured oil on the tested lease.

(2) Initial gravity tests shall be made by the operator when such separator, treating, and/or storage vessels are first used pursuant to this section. Subsequent tests shall be made at the request of either the Commission [~~commission~~] or any interested party; and such subsequent tests shall be witnessed by the requesting party. Any interested party may witness the tests.

(3) Each operator shall enter on the [~~face of his~~] required production report the gravity of the oil delivered to market from the lease reported, and it is provided that should a volume of oil delivered to market from such lease separation facilities not meet the gravity requirement established by the described test, adjustment shall be made by charging the allowable of the lease on the relationship of the volume and the gravity of the particular crude.

(4) Where a conventional heater treater is required and is used only to break oil from an emulsion prior to oil measurement, this section will not be applicable; provided, however, that by this limitation on the section, it is not intended that excessive heat may be used in conventional heater treater, and in circumstances where such heater treater is connected to a gas gathering system and it is found by Commission [~~commission~~] investigation made on its own volition or on complaint of any interested party that excessive heat is used, either the provisions of this section or special restrictive regulation may be made applicable.

§3.27. Gas to be [~~To Be~~] Measured and Surface Commingling of Gas.

(a) All natural gas, except casinghead gas, produced from wells shall be measured, with each completion being measured separately, before the gas leaves the lease, and the producer shall report the volume produced from each completion to the Commission [~~commission~~]. For Commission [~~commission~~] purposes, the measurement requirements of this section are satisfied by the use of coriolis or turbine meters or any other measurement device or technology that conforms to standards established, as of the time of installation, by the American Petroleum Institute (API) or the American Gas Association (AGA) for measuring oil or gas, as applicable, or approved by the Director of the Oil and Gas Division as an accurate measurement technology. Exceptions to this provision may be granted by the Commission [~~commission~~] upon written application.

(b) All casinghead gas sold, processed for its gasoline content, used in a field other than that in which it is produced, or used in cycling or repressuring operations, shall be measured before the gas leaves the lease, and the producer shall report the volume produced to

the Commission [~~commission~~]. Exceptions to this provision may be granted by the Commission [~~commission~~] upon written application.

(c) All casinghead gas produced in this state which is not covered by the provisions of subsection (b) of this section, shall be measured before the gas leaves the lease, is used as fuel, or is released into the air, based on its use or on periodic tests, and reported to the Commission [~~commission~~] by the producer. The volume of casinghead gas produced by wells exempt from gas/oil ratio surveys must be estimated, based on general knowledge of the characteristics of the wells. Exceptions to this provision may be granted by the Commission [~~commission~~] upon written application.

(d) Releases and production of gas at a volume or daily flow rate, commonly referred to as "too small to measure" (TSTM), which, due to minute quantity, cannot be accurately determined or for which a determination of gas volume is not reasonably practical using routine oil and gas industry methods, practices, and techniques are exempt from compliance with this rule and are not required to be reported to the Commission [~~commission~~] or charged against lease allowable production.

(e) The Commission may approve surface commingling of gas or oil and gas described in subsections (a), (b) or (c) of this section and produced from two or more tracts of land producing from the same Commission-designated reservoir or from one or more tracts of land producing from different Commission-designated reservoirs in accordance with §3.26(b) of this title (relating to Separating Devices, Tanks, and Surface Commingling of Oil). In order to prevent waste, to promote conservation or to protect correlative rights, the Commission [~~commission~~] may also approve surface commingling of gas or oil and gas described in subsections (a), (b) or (c) of this section and produced from two or more tracts of land producing from the same Commission-designated [~~commission-designated~~] reservoir or from one or more tracts of land producing from different Commission-designated [~~commission-designated~~] reservoirs in accordance with §3.26(d) [~~§3.26(b)~~] of this title [~~(relating to Separating Devices, Tanks, and Surface Commingling of Oil)~~].

(f) In reporting gas well production, the full-well stream gas shall be reported and charged against each gas well for allowable purposes. All gas produced, including all gas used on the lease or released into the air, must be reported regardless of its disposition.

(g) If gas is produced from a lease or other property covered by the coastal or inland waters of the state, the gas produced may, at the option of the operator, be measured on a shore or at a point removed from the lease or other property from which it was produced.

(h) All natural hydrocarbon gas produced and utilized from wells completed in geothermal resource reservoirs shall be measured and allocated to each individual lease based on semiannual tests conducted on full well stream lease production.

(i) For purposes of this rule, "measured" shall mean a determination of gas volume in accordance with this rule and other rules of the Commission [~~commission~~], including accurate estimates of unmetered gas volumes released into the air or used as fuel.

(j) No meter or meter run used for measuring gas as required by this rule shall be equipped with a manifold which will allow gas flow to be diverted or bypassed around the metering element in any manner unless it is of the type listed in paragraphs (1) or (2) of this subsection:

(1) double chambered orifice meter fittings with proper meter manifolding to allow equalized pressure across the meter during servicing;

(2) double chambered or single chambered orifice meter fittings equipped with proper meter manifolding or other types of metering devices accompanied by one of the following types of meter inspection manifolds:

(A) a manifold with block valves on each end of the meter run and a single block valve in the manifold complete with provisions to seal and a continuously maintained seal record;

(B) an inspection manifold having block valves at each end of the meter run and two block valves in the manifold with a bleeder between the two and with one valve equipped with provisions to seal and continuously maintained seal records;

(C) a manifold equipped with block valves at each end of the meter run and one or more block valves in the manifold, when accompanied by a documented waiver from the owner or owners of at least 60% of the royalty interest and the owner or owners of at least 60% of the working interest of the lease from which the gas is produced.

(k) Whenever sealing procedures are used to provide security in the meter inspection manifold systems, the seal records shall be maintained for at least three years at an appropriate office and made available for [~~Railroad~~] Commission inspection during normal working hours. At any time a seal is broken or replaced, a notation will be made on the orifice meter chart along with graphic representation of estimated gas flow during the time the meter is out of service.

(l) All meter requirements apply to all meters which are used to measure lease production, including sales meters if sales meter volumes are allocated back to individual leases.

(m) The Commission [~~commission~~] may grant an exception to measurement requirements under subsections (a), (b) and (c) of this section if the requirements of this subsection are met. An exception granted under this subsection will be revoked if the most recent well test or production reported to the Commission [~~commission~~] reflects a production rate of more than 20 MCF of gas per day or if any of the other requirements for an exception under this subsection are no longer satisfied. An applicant seeking an exception under this subsection must file an application establishing:

(1) the most recent production test reported to the Commission [~~commission~~] demonstrates that the gas well or oil lease for which an exception is sought produces at a rate of no more than 20 MCF of gas per day;

(2) an annual test of the production of the gas well or oil lease provides an accurate estimate of the daily rate of gas flow;

(3) the flow rate established in paragraph (2) of this subsection multiplied by the recorded duration determined by any device or means that accurately records the duration of production each month yields an accurate estimate of monthly production; and

(4) the operator of the pipeline connected to the gas well or oil lease concurs in writing with the application.

(n) Failure to comply with the provisions of this rule will result in severance of the producing well, lease, facility, or gas pipeline or in other appropriate enforcement proceeding.

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 13, 2018.

TRD-201804881

Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: December 30, 2018
For further information, please call: (512) 475-1295

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION
SUBCHAPTER B. MISCELLANEOUS NON-TAX REPORTING AND REMITTANCE REQUIREMENTS
DIVISION 1. FINES RETAINED BY MUNICIPALITIES AND COUNTIES FOR CERTAIN ENFORCEMENT EXPENSES

34 TAC §§1.100 - 1.103

The Comptroller of Public Accounts proposes new §1.100, concerning fines retained by municipalities and counties for certain enforcement expenses; §1.101, concerning reporting requirements; §1.102, concerning failure to submit report; and §1.103, concerning requirement to maintain records. The proposed new rules will be under Chapter 1, new Subchapter B, Miscellaneous Non-Tax Reporting and Remittance Requirements, new Division 1, Fines Retained by Municipalities and Counties for Certain Enforcement Expenses. The proposed new rules implement the requirements of House Bill 2065, 85th Legislature, 2017, codified under Transportation Code, §644.102. The comptroller has determined that the following new rules are necessary for implementation and enforcement of Transportation Code, §644.102(f)(1), concerning the report to be filed annually with the comptroller by a municipality or county that retains a fine from enforcement of Chapter 644, and the consequences for failure to file the report in accordance with that subsection.

New §1.100 describes the maximum amount of fines that may be retained by municipalities and counties engaging in enforcement activities under Transportation Code, Chapter 644, and the authority of the comptroller to utilize relevant audit information to determine that amount, or, in the absence of a recent audit reflecting actual expenses incurred, to estimate enforcement expenses and determine the maximum allowable amount of retention based upon that estimate. New §1.101 describes reporting requirements applicable to a municipality or county that retains a fine in accordance with proposed new §1.100, including how the form of report may be obtained, the timing and manner of submission to the comptroller, and the required contents of the report. New §1.102 explains the consequences of failing to submit the report as required under the preceding sections. New §1.103 describes certain types of records and information that must be retained and, if requested, provided to the comptroller for the purposes of verifying compliance with these proposed provisions, by a municipality or county that is required to submit a report under new §1.101.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposals are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposals would have no significant fiscal impact on small businesses, micro-businesses or rural communities. The rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed rules would benefit the public by specifying comptroller rulings in regards to Transportation Code, §644.102(f). There would be no anticipated significant economic cost to the public.

Comments on the proposals may be submitted to Robin Mitchell, Director, Revenue Accounting Division, Comptroller of Public Accounts, at Robin.Mitchell@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.* For further information, please call the Comptroller of Public Accounts Revenue Accounting Division at (512) 463-7720.

The new rules are proposed under Transportation Code, §644.102(f)(2), which authorizes the comptroller to adopt rules necessary for the implementation of subsection (f)(1) of that section.

The proposed new rules implement Transportation Code, §644.102.

§1.100. Fines Retained by Municipalities and Counties for Certain Enforcement Expenses.

In each fiscal year, a municipality or county that engages in enforcement under Transportation Code, Chapter 644 may retain fines collected from such enforcement in an amount not to exceed 110% of the municipality or county's actual expenses for enforcement of that chapter in the preceding fiscal year, as determined by the comptroller after reviewing the most recent municipal audit conducted under Local Government Code, §103.001 or the most recent county audit conducted under Local Government Code, Chapter 115. If the most recent audit does not reflect actual expenses incurred by the municipality or county for the enforcement of Chapter 644, the municipality or county may retain fines in an amount not to exceed 110% of the amount the comptroller estimates would be the municipality or county's actual enforcement expenses during the year.

§1.101. Reporting Requirements.

(a) A municipality or county that retains a fine in accordance with §1.100 of this title (relating to Fines Retained by Municipalities and Counties for Certain Enforcement Expenses) shall, on an annual basis and no later than 60 days following the end of the most recently completed fiscal year, submit to the comptroller via mail or upload to the comptroller's Internet website a report that details the amount of fines retained, the actual expenses claimed by the municipality or county in connection with the enforcement of Transportation Code, Chapter 644 during the previous fiscal year (or estimated expenses anticipated, if applicable), and any other information determined by the comptroller to be necessary for implementation and enforcement of this section. The municipality or county must submit the report in the manner and format prescribed by this section.

(b) The comptroller shall provide the form of report to be submitted by a municipality or county under this section, which may

include a supplemental worksheet itemizing estimated or actual costs attributable to enforcement activities conducted under Transportation Code, Chapter 644. Copies of the form may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528, or downloaded from the comptroller's website at COMPTROLLER.TEXAS.GOV. Copies may also be requested by calling the comptroller's toll-free number, 1-800-531-5441, extension 34276. The comptroller may update the form as needed.

(c) The report to be submitted by a municipality or county under this section must include the following information for the fiscal year covered by the report:

(1) the total amount of actual expenses incurred (or estimated expenses anticipated, if applicable) by the municipality or county for the enforcement of Transportation Code, Chapter 644;

(2) the total amount of fines collected by the municipality or county from the enforcement of Transportation Code, Chapter 644;

(3) the amount of fines retained by the municipality or county in accordance with §1.100 of this title;

(4) the amount of proceeds of all fines exceeding the limit imposed under §1.100 of this title, to be delivered to the comptroller for deposit to the credit of the Texas Department of Transportation in accordance with Transportation Code, §644.102(f);

(5) a copy of the municipal audit conducted under Local Government Code, §103.001, or county audit conducted under Local Government Code, Chapter 115, as applicable; and

(6) any other information deemed necessary by the comptroller for the efficient administration of this section.

§1.102. Failure to Submit Report.

(a) A municipality or county that fails to file a report required under this section within 30 days of the filing deadline shall send to the comptroller for deposit to the credit of the Texas Department of Transportation payment in an amount equal to the amount of fines retained by the municipality or county in the fiscal year the report would cover. Amounts owing and unpaid under this subsection shall constitute indebtedness to the state as set forth in Government Code, §403.055, et seq., and the comptroller may take any action authorized by law to recover the debt, which may include referring the matter to the Office of the Attorney General for collection or deducting the amount of indebtedness or delinquency from amounts owed by the state to the municipality or county, as applicable.

(b) The comptroller may report any violation or suspected violation of any rule set forth in Division 1, Fines Retained by Municipalities and Counties for Certain Enforcement Expenses, of this subchapter, that the comptroller is authorized to adopt pursuant to Transportation Code, §644.102 to the Department of Public Safety.

§1.103. Requirement to Maintain Records.

A municipality or county required to submit a report under this section shall retain the following records and information for a minimum of four years following the fiscal year covered by the report (regardless of whether such report was filed timely, late, or not at all) and, upon request by the comptroller, shall provide the records and information for the purpose of verifying the entity's compliance with this section:

(1) audited financial statements for the four most recent audited accounting years of the municipality or county;

(2) regarding revenue: A summary report by fiscal year with a grand total of all fine revenue (both assessed and collected) with a detailed listing of each citation including, but not limited to the following:

(A) citation number;

(B) receipt number;

(C) assessment amount of fine;

(D) payment amount of fine;

(E) offense date;

(F) payment receipt date;

(G) defendant/violator name;

(H) offense description;

(I) offense code;

(J) statute reference of offense; and

(K) docket number;

(3) regarding expenses: A summary report by fiscal year with a grand total of all expenses/costs related to enforcement activities conducted under Transportation Code, Chapter 644 and containing a detailed listing including, but not limited to the following:

(A) vendor name;

(B) invoice number;

(C) accounting date;

(D) invoice date;

(E) personnel costs including wages, salaries, and benefits;

(F) account number;

(G) account description; and

(H) amount of expense.

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 13, 2018.

TRD-201804865
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Earliest possible date of adoption: December 30, 2018
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 450. VETERANS COUNTY SERVICE OFFICERS CERTIFICATE OF TRAINING

40 TAC §§450.1, 450.3, 450.5

The Texas Veterans Commission (Commission) proposes amendments to §§450.1, 450.3, and 450.5 of Title 40, Part

15, Chapter 450 of the Texas Administrative Code concerning Veterans County Service Officers Certificate of Training.

PART I. PURPOSE AND BACKGROUND

The rule amendments are proposed to align the timeframe of Veteran County Service Officer (VCSO) certificate of training requirements, adopted by the commission to comply with Senate Bill (SB) 544, 85th Legislature, Regular Session (2017), with the fiscal year, as required by Tex. Gov't Code §316.071 ("Appropriations of state government shall conform to [the] fiscal year" running from September 1 through August 31).

PART II. EXPLANATION OF SECTIONS

§450.1. Definitions.

The definitions section is amended to insert "fiscal" before "year" in paragraph (1), to be consistent with Tex. Gov't Code §316.071.

§450.3. General Provisions.

The provision in subsection (b) is amended to insert "each fiscal" and remove "a" before the word "year," to be consistent with Tex. Gov't Code §316.071.

The provision in subsection (c) is amended to insert "fiscal" between "each" and "year," to be consistent with Tex. Gov't Code §316.071.

The provision in subsection (d) is amended to insert "fiscal" and delete "calendar" before "year," to be consistent with Tex. Gov't Code §316.071.

The provision in subsection (h) is amended to insert "October" for "January," to be consistent with Tex. Gov't Code §316.071.

§450.5. Documentation of Attendance.

The provision in subsection (a) is amended to insert "October" for "January," to be consistent with Tex. Gov't Code §316.071.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed amendments to rules §§450.1, 450.3, and 450.5 will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed amendments to rules §§450.1, 450.3, and 450.5.

COSTS TO REGULATED PERSONS

Ms. Nall has also determined there will not be anticipated economic costs to persons required to comply with the proposed amendments to rules §§450.1, 450.3, and 450.5.

LOCAL EMPLOYMENT IMPACT

Tim Shatto, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed amendments to rules §§450.1, 450.3, and 450.5.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Robyn Provost, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed amendments to rules §§450.1, 450.3, and 450.5 will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Cruz Montemayor, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed amendments to rules §§450.1, 450.3, and 450.5 are in effect, the public benefit anticipated as a result of administering the proposed amendments to rules §§450.1, 450.3, and 450.5 will be positive, as the proposed amendment will eliminate confusion and waste of resources by aligning the VCSO training requirements and their costs with the state fiscal year, as required by Tex. Gov't Code §316.071.

GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Montemayor has also determined that for each year of the first five years that the proposed amendments to the rules are in effect, the following statements will apply:

(1) The proposed amendments to the rules will not create or eliminate a government program.

(2) Implementation of the proposed amendments to the rules will not require creation of new employee positions or elimination of existing employee positions.

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

(4) No fees will be created by the proposed amendments to the rules.

(5) The proposed amendments to the rules will not require new regulations.

(6) The proposed amendments to the rules have no effect on existing regulations.

(7) The proposed amendments to the rules have no effect on the number of individuals subject to the rules' applicability.

(8) The proposed amendments to the rules have no effect on the state's economy.

PART IV. COMMENTS

Comments on the proposed amendments to the rules may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 450 Rules" in the subject line. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

PART V. STATUTORY AUTHORITY

The proposed amendment to the rules is authorized under Texas Government Code §434.010, which permits the commission to establish rules it considers necessary for its administration, and Tex. Gov't Code §316.071, which defines the fiscal year for state government business.

The proposed amendment to the rules will further implement amended Texas Government Code §434.038, enacted by Senate Bill 544, 85th Legislature, Regular Session, 2017. No other statutes, articles, or codes are affected by this proposal.

§450.1. Definitions.

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

(1) Certificate of training--Certificate or transcript provided to officers who complete all initial training requirements or who earn a minimum number of credit hours each fiscal year for completing training provided by the commission or completing other commission approved training.

(2) - (7) (No change.)

§450.3. General Provisions.

(a) (No change.)

(b) Completion of initial training shall constitute necessary training to issue a certificate of training for each fiscal [a] year. Officers must complete initial training within one year from the date of appointment or the effective date of this rule.

(c) Each officer shall be required to earn 12 credit hours each fiscal year to maintain certification. Credit hours may be accumulated in one year by completing training provided or approved by the commission. Credit hours may not be accumulated for the same subjects within the calendar year.

(d) The commission may pay for attendance to one commission conducted training event per fiscal [~~calendar~~] year to obtain the annual training requirement. However, if an officer has met the 12 hours required annually, then the commission will not pay for the officer to attend subsequent training events.

(e) - (g) (No change.)

(h) After completion of all initial training requirements, a certificate of training shall be issued each October [~~January~~] by the commission to each officer who completes the required number of credit hours of training and obtains the minimum required score on the annual certification test.

(i) (No change.)

§450.5. Documentation of Attendance.

(a) After the anniversary date, the commission shall provide a certificate of training the following October [~~January~~] to officers who earned a minimum number of credit hours during the preceding year.

(b) (No change.)

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

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

TRD-201804936
Victor Polanco
Director, Claims Representation and Counseling
Texas Veterans Commission
Earliest possible date of adoption: December 30, 2018
For further information, please call: (512) 463-6564

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CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION

40 TAC §451.3

The Texas Veterans Commission (commission) proposes an amendment to 40 TAC §451.3, concerning Veterans County Service Officers Accreditation, General Provisions.

PART I. PURPOSE AND BACKGROUND

The rule amendment is proposed to align the timeframe of Veteran County Service Officer (VCSO) accreditation training requirements, adopted by the commission to comply with Senate Bill (SB) 544, 85th Legislature, Regular Session (2017), with the fiscal year, as required by Tex. Gov't Code §316.071 ("Appropriations of state government shall conform to [the] fiscal year" running from September 1 through August 31).

PART II. EXPLANATION OF SECTIONS

§451.3. General Provisions.

The proposed amendment to rule §451.3 is intended to align the timeframe of VCSO training requirements with the fiscal year. *See* Tex. Gov't Code §316.071.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed amendment to rule §451.3 will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed amendment to rule §451.3.

COSTS TO REGULATED PERSONS

Ms. Nall has also determined there will not be anticipated economic costs to persons required to comply with the proposed amendment to rule §451.3.

LOCAL EMPLOYMENT IMPACT

Tim Shatto, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed amendment to rule §451.3.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Robyn Provost, Manager, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed amendment to rule §451.3 will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Cruz Montemayor, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed amendment to rule §451.3 is in effect, the public benefit anticipated as a result of administering the proposed amendment to rule §451.3 will be positive, as the proposed amendment will eliminate confusion and waste of resources by aligning the VCSO training requirements and their costs with the state fiscal year, as required by Tex. Gov't Code §316.071.

GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Montemayor has also determined that for each year of the first five years that the proposed amendment to rule §451.3 is in effect, the following statements will apply:

(1) The proposed amendment to the rules will not create or eliminate a government program.

(2) Implementation of the proposed amendment to the rules will not require creation of new employee positions, or elimination of existing employee positions.

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

(4) No fees will be created by the proposed amendment to the rules.

(5) The proposed amendment to the rules will not require new regulations.

(6) The proposed amendment to the rules has no effect on existing regulations.

(7) The proposed amendment to the rules has no effect on the number of individuals subject to the rules' applicability.

(8) The proposed amendment to the rules has no effect on the state's economy.

PART IV. COMMENTS

Comments on the proposed amendment to the rules may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to *rulemaking@tvc.texas.gov.* For comments submitted electronically, please include "Chapter 451 Rules" in the subject line. The commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

PART V. STATUTORY AUTHORITY

The proposed amendment is authorized under Texas Government Code §434.010, which permits the commission to establish rules it considers necessary for its administration, and Tex. Gov't Code §316.071, which defines the fiscal year for state government business.

The proposed amendment to the rules will further implement amended Texas Government Code §434.038, enacted by Senate Bill 544, 85th Legislature, Regular Session, 2017. No other statutes, articles, or codes are affected by this proposal.

§451.3. General Provisions.

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

(f) The commission may pay for attendance to one commission conducted training event per fiscal [~~calendar~~] year to obtain the annual training requirement. However, if an officer has met the 12 hours required annually, then the commission will not pay for the officer to attend subsequent training events.

(g) - (l) (No change.)

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

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

TRD-201804937

Victor Polanco
Director, Claims Representation and Counseling
Texas Veterans Commission
Earliest possible date of adoption: December 30, 2018
For further information, please call: (512) 463-6564

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS
SUBCHAPTER I. MEMORANDUM OF UNDERSTANDING WITH THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

The Texas Department of Transportation (department) proposes the repeal of §§2.301 - 2.308, concerning Memorandum of Understanding with the Texas Commission on Environmental Quality, and the simultaneous replacement with new §§2.301 - 2.308.

EXPLANATION OF PROPOSED REPEAL AND NEW SECTIONS

Transportation Code, §201.607 requires the department to adopt a memorandum of understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic or archeological resources. Transportation Code, §201.607 also requires the department to adopt the MOU and all revisions to it by rule, and to periodically evaluate and revise the MOU. In order to meet the legislative intent and to ensure that the protection of the natural environment is given full consideration in accomplishing the department's activities, the department has evaluated its MOU with the Texas Commission on Environmental Quality (TCEQ) adopted in 2013, and finds it necessary to repeal existing 43 TAC Chapter 2, Subchapter I and simultaneously replace it with a new Subchapter I, §§2.301 - 2.308.

The provisions of Chapter 2, new Subchapter I, have been agreed on by the TCEQ and the department in order to update the current MOU. This replacement is proposed to better explain both agencies' responsibilities. The changes include modifications to the triggers for coordination, the methods of coordination, and the required content for environmental review documents. The changes simplify and clarify both agencies' obligations under the coordination process.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed repeal and new sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed repeal and new sections.

LOCAL EMPLOYMENT IMPACT STATEMENT

Carlos Swonke, Director, Environmental Affairs Division, has determined that there will be no significant impact on local

economies or overall employment as a result of enforcing or administering the proposed repeal and new sections and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Swonke has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed repeal and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the proposed repeal and new sections will be the streamlining of agency coordination activities by incorporating them in existing public outreach activities.

COSTS ON REGULATED PERSONS

Mr. Swonke has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed repeal and new sections and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Swonke has considered the requirements of Government Code, §2001.0221 and has determined that for the first five years in which the proposed repeal and new sections are in effect, there is no impact on the growth of state government.

TAKINGS IMPACT ASSESSMENT

Mr. Swonke has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the repeal of §§2.301 - 2.308 and proposed new §§2.301 - 2.308 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "TxDOT-TCEQ MOU." The deadline for receipt of comments is 5:00 p.m. on December 31, 2018. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

43 TAC §§2.301 - 2.308

STATUTORY AUTHORITY

The repeal and new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607, which directs the department and the Texas Commission on Environmental Quality to examine and revise their memorandum of understanding.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §201.607.

§2.301. Purpose.
§2.302. Authority.
§2.303. Definitions.
§2.304. Responsibilities.
§2.305. Coordination during Environmental Review Process.
§2.306. Exchange of Air Quality Information.
§2.307. No Waiver of Rights.
§2.308. Review of MOU.

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 15, 2018.

TRD-201804915
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 30, 2015
For further information, please call: (512) 463-8630

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43 TAC §§2.301 - 2.308

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.607, which directs the department and the Texas Commission on Environmental Quality to examine and revise their memorandum of understanding.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §201.607.

§2.301. Purpose.

This subchapter contains the Memorandum of Understanding (MOU) between the Texas Department of Transportation (TxDOT) and the Texas Commission on Environmental Quality (TCEQ) concerning the review of the potential environmental effect of transportation projects as required by Transportation Code, §201.607. The MOU does not affect coordination or permits required by other state or federal laws; however, as set forth in this MOU, TxDOT may elect to coordinate with TCEQ under this MOU concerning transportation projects that this MOU does not require to be coordinated. The purpose of this MOU is to provide a formal mechanism by which TCEQ reviews transportation projects that have the potential to affect resources within TCEQ's jurisdiction. This MOU also promotes the mutually beneficial sharing of information between TxDOT and TCEQ, which will assist TxDOT in making environmentally sound decisions.

§2.302. Authority.

(a) Transportation Code, §201.607, directs the Texas Department of Transportation to adopt memoranda of understanding with each

agency that has responsibilities for the protection of the natural environment.

(b) Under Water Code, §5.104(b) and Health and Safety Code, §382.035, the Texas Commission on Environmental Quality (TCEQ) may enter into a memorandum of understanding with any other state agency and shall adopt by rule any memorandum of understanding between TCEQ and any other state agency.

§2.303. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise. Any other words or terms used in this Memorandum of Understanding have their ordinary meaning, except to the extent such words or terms are defined in §2.5 of this chapter (Relating to Definitions), in which case such definitions shall apply.

(1) Assessment unit--For a water body in the state, the smallest geographic area of use support analyzed for such body in Texas Commission on Environmental Quality's most recent integrated report prepared under the Clean Water Act §305(b) that includes a Clean Water Act §303(d) list that has been approved by the U.S. Environmental Protection Agency. An assessment unit is based on the primary segment assessment unit identified in the integrated report.

(2) Construction--Activities that involve the building of transportation projects on new location; or the expansion, rehabilitation, or reconstruction, of an existing facility.

(3) EPA--The United States Environmental Protection Agency.

(4) Federal Clean Air Act (FCAA)--The federal statute, including all amendments, that establishes National Ambient Air Quality Standards (NAAQS) and mandates procedures for reaching and maintaining these standards, codified at 42 United States Code §§7401, et seq.

(5) Maintain or maintenance--Activities which involve the upkeep or preservation of an existing facility to prevent that facility's degradation to an unsafe or irreparable state, or which involve the treatment of an existing facility or its environs to meet acceptable standards of operation or aesthetic quality. The activities generally do not require the acquisition of additional right of way or result in increased roadway capacity.

(6) Maintenance area--A geographic area previously designated as a non-attainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code §7505a of the FCAA, and other areas designated as maintenance areas by the EPA.

(7) Non-attainment area--A geographic area designated nonattainment by the EPA as failing to meet the NAAQS for a pollutant for which a standard exists. The EPA designates counties (or portions thereof) as nonattainment under the provisions of 42 United States Code §7407(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and relevant notices in the *Federal Register.*

(8) State Implementation Plan (SIP)--The plan prepared by the TCEQ under 42 United States Code §7410 of the FCAA to attain, maintain, implement, or enforce NAAQS. An approved SIP is the implementation plan, or most recent revision of this plan, that has been approved by EPA under 42 United States Code §7410 of the FCAA.

(9) TCEQ--Texas Commission on Environmental Quality.

(10) TxDOT--Texas Department of Transportation.

(11) Total Maximum Daily Load (TMDL)--The total amount of a substance that a water body can assimilate and still meet the Texas Surface Water Quality Standards as adopted by the TCEQ for a particular water body.

(12) TMDL Implementation Plan (I-Plan)--A plan describing the strategy and activities TCEQ and watershed partners will carry out to improve water quality in the affected watershed.

(13) Transportation enhancement--An activity that is listed under 23 United States Code §101(a)(29), that relates to a transportation project, and is eligible for federal funding under 23 United States Code §133.

(14) Transportation project--A project to construct, maintain, or improve a highway, rest area, toll facility, aviation facility, public transportation facility, rail facility, ferry, or ferry landing. A transportation enhancement is also a transportation project.

§2.304. Responsibilities.

(a) TxDOT is responsible for the development, construction, maintenance, and operation of the state highway system and other transportation systems as designated by the legislature.

(b) TCEQ is the state air and water pollution control agency and is the principal authority in Texas on matters relating to the quality of the state's air and water resources, including the following:

(1) Air quality. TCEQ's primary responsibility relating to air, as designated by Health and Safety Code, §382.002, includes, but is not limited to, setting standards, criteria, levels, and emission limits for air quality and air pollution control; and

(2) Water quality. TCEQ is charged with the protection of water quality, water rights, and the adoption and enforcement of rules and performance of other acts relating to the safe construction, maintenance, and removal of dams. TCEQ's jurisdiction over water quality, water rights, and enforcement of both water quality, water rights, and dam safety includes, but is not limited to, those items outlined in Water Code §5.013.

§2.305. Coordination during Environmental Review Process.

(a) Applicability. This section specifies when TxDOT shall coordinate a transportation project with TCEQ. TxDOT may elect to coordinate with TCEQ concerning other transportation projects that this MOU does not require to be coordinated.

(1) Not applicable. This MOU does not apply to a project that TxDOT classifies as a categorical exclusion under §2.81 of this chapter (relating to Categorical Exclusions) and TxDOT is not required to coordinate such projects with TCEQ.

(2) Applicable. TxDOT will coordinate with TCEQ on transportation projects that require environmental impact statements, supplemental environmental impact statements, and environmental assessments as defined in §2.5 of this chapter, in the manner described in subsection (b) of this section.

(3) Reevaluations. If TxDOT prepares a written reevaluation for an EIS or EA level transportation project under §2.85 of this chapter (relating to Reevaluations), TxDOT shall coordinate the reevaluation with TCEQ if the earlier coordination concerning the project is no longer valid as a result of changes in the project.

(b) Coordination Process.

(1) TxDOT will submit a notice of availability for each draft environmental impact statement, supplemental environmental impact statement, and environmental assessment pursuant to §2.108 (relating to Notice of Availability) to the e-mail address specified by TCEQ in writing.

(2) If required by the applicable sections, a notice of availability submitted to TCEQ pursuant to this section will include notice of an opportunity for public hearing as provided by §2.106 (relating to Opportunity for Public Hearing) or notice of a public hearing as provided by §2.107 (relating to Public Hearing).

(3) TxDOT shall ensure that each review document for which TCEQ receives notice under paragraph (1) of this subsection meets the following criteria.

(A) Air quality. The review document shall indicate whether the project adds capacity in a nonattainment or maintenance area for one or more federal Clean Air Act National Ambient Air Quality Standards.

(B) Water resources. The review document shall include:

(i) The location of the project in the watershed, segment name, segment number, and the assessment unit number. The review document shall also provide:

(I) information identifying the associated activities which will be implemented, operated, and maintained in a manner that is consistent with an approved TMDL or approved I-Plan when the project is located within five miles of, and within the watershed of, an impaired assessment unit under Section 303(d) of the federal Clean Water Act; and

(II) information describing the process for compliance, when applicable, with the Texas Pollutant Discharge Elimination System (TPDES) program and the TCEQ's Water Quality Certification Program under Section 401 of the CWA.

(ii) Whether the transportation project will require Tier II individual Clean Water Act Section 401 certification under procedures defined in the most recent version of the memorandum of agreement between the U.S. Army Corps of Engineers and TCEQ.

(iii) For a transportation project located in the recharge, transition, or contributing zones of the Edwards Aquifer, pursuant to 30 TAC Chapter 213, Subchapters A and B (relating to Edwards Aquifer), the location of the project within the Edwards Aquifer and a statement that the proposed project and associated activities shall be implemented, operated, and maintained in a manner that complies with the Edwards Aquifer rules and any applicable TCEQ guidance documents in effect to implement the rules.

(4) TCEQ shall have a minimum period of 30 days, from the date of receipt, to review the draft environmental impact statement, supplemental environmental impact statement, or environmental assessment and provide written comments. Before the deadline for review, TCEQ may, if necessary, notify TxDOT that it is extending the review period for no more than 15 additional days. TCEQ will submit any comments to the e-mail address specified by TxDOT in writing.

(5) If TCEQ provides comments within the timeframe described in paragraph (4) of this subsection, TxDOT will consider TCEQ's comments as applicable. TCEQ's comments will be made part of the project file. TxDOT will consider TCEQ comments submitted to TxDOT after the timeframe described in paragraph (4) of this subsection to the extent possible, given the stage of the environmental review process at the time of the submission.

§2.306. Exchange of Air Quality Information.

(a) Upon request by TxDOT, TCEQ will provide publicly available information to TxDOT related to air quality, such as:

(1) information useful for establishing existing air quality conditions to be described in an environmental review document;

(2) the location and severity of conditions in non-attainment areas;

(3) information affecting transportation-related activity and mobile sources in the state implementation plan; and

(4) proposed and existing locations of roadside air monitors.

(b) TxDOT and TCEQ will exchange data useful for developing mobile source budgets, and data on transportation conformity determinations, including for any area newly designated by EPA as a non-attainment area.

§2.307. No Waiver of Rights.

As the state environmental regulatory agency, TCEQ reserves all rights it has to enforce relevant laws, and the parties intend that TCEQ's participation in this MOU does not have the effect of waiving those rights or the requirements of any laws that apply to the projects covered by this MOU. The parties agree that this MOU does not preclude either party from making any legal argument.

§2.308. Review of MOU.

This MOU shall be reviewed and updated no later than five years from the adoption date. TxDOT and TCEQ by rule shall adopt the MOU and all revisions to the MOU. If a change in state or federal law or a change in the SIP necessitates a change in this MOU, or if the parties agree that there has been a significant increase in the number of transportation projects requiring TxDOT to coordinate with TCEQ, then representatives from both TxDOT and TCEQ will meet to work out a mutually agreeable amendment to the MOU.

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 15, 2018.

TRD-201804916
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 30, 2018
For further information, please call: (512) 463-8630

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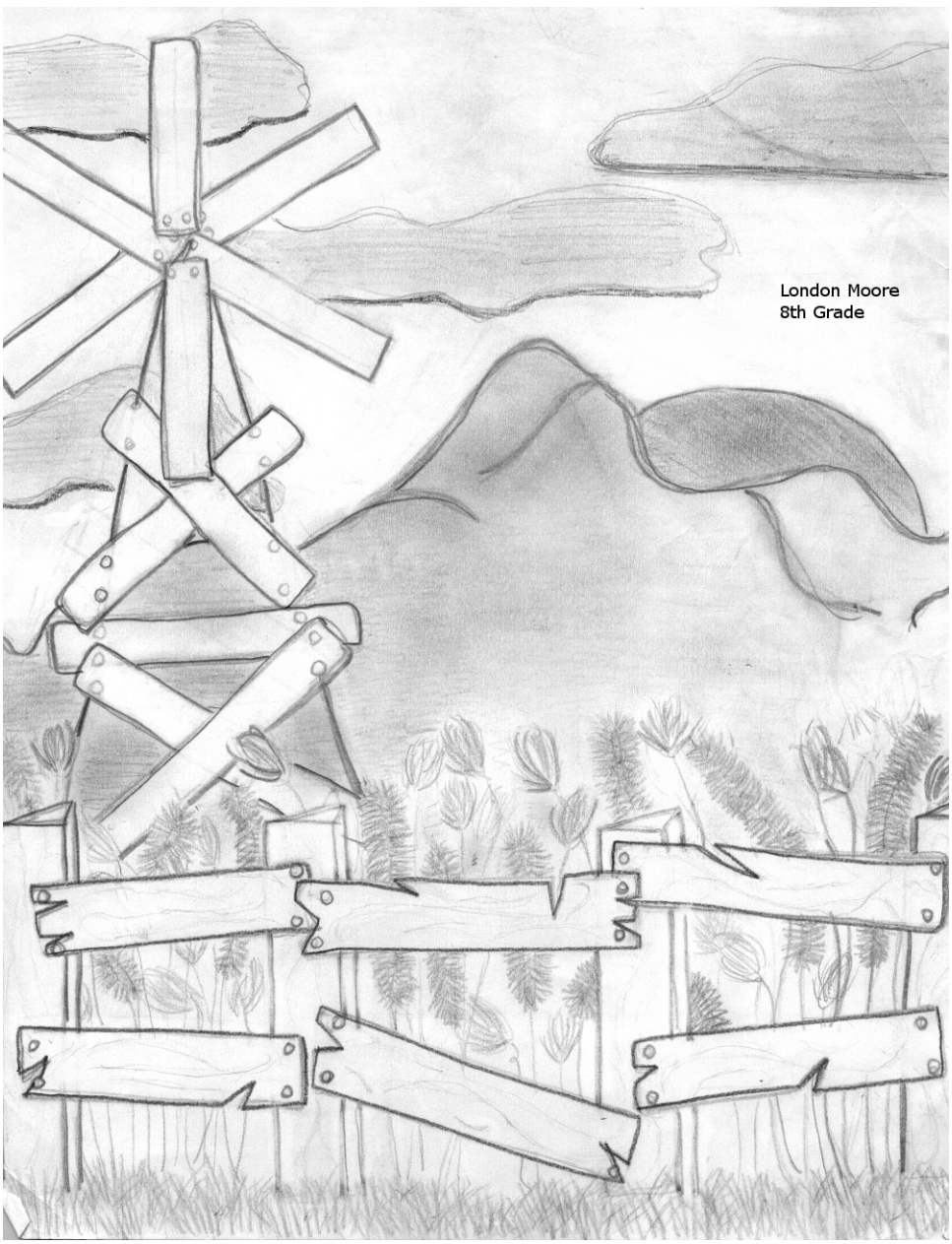
London Moore
8th Grade

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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8085

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8085, concerning Reimbursement Methodology for Physicians and Other Practitioners, without changes to the proposed text as published in the August, 24, 2018, issue of the *Texas Register* (43 TexReg 5457); therefore, the text of the rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are a result of House Bill (H.B.) 1486 and Senate Bill (S.B.) 547, 85th Legislature, Regular Session, 2017. H.B. 1486 added services provided to Medicaid beneficiaries by peer specialists as a reimbursable Medicaid benefit. S.B. 547 amended the Texas Human Resources Code to remove certain conditions on the authority of state supported living centers (SSLCs) to provide non-residential services to support an individual with intellectual or developmental disabilities. The amendments allow peer specialists and SSLCs to receive Medicaid reimbursement and increase Medicaid clients' access to appropriate services.

COMMENTS

The 30-day comment period ended September 23, 2018. During this period, HHSC did not receive any comments regarding the proposed rule.

ADDITIONAL INFORMATION

For further information, please call: (512) 730-7402.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under the Texas Human Resources Code, Chapter 32.

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 14, 2018.

TRD-201804906
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 4, 2018
Proposal publication date: August 24, 2018
For further information, please call: (512) 730-7402

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1070

The Texas Education Agency (TEA) adopts new §97.1070, concerning increasing intensity of interventions and sanctions. The new section is adopted with changes to the proposed text as published in the June 1, 2018 issue of the *Texas Register* (43 TexReg 3543). The adopted new rule provides clarity regarding when the commissioner may exercise the statutory authority to increase the level of intervention and sanction applicable to a school district, an open-enrollment charter school, or a campus thereof.

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

New subsection (a) indicates that the increase in level of intervention or sanction may be any of the interventions or sanctions authorized by the legislature, including closure or placement of a

board of managers. The statute authorizes increasing levels but places no limitation on the amount of increase. In order to ensure students access to a successful educational program, the commissioner may exercise any authorized intervention or sanction in circumstances where the school district, open-enrollment charter school, or campus thereof (a school system) fails to improve the education provided to its students.

New subsection (b) defines lack of improvement as failure to increase the domain score of the school system subject to intervention to a higher overall rating. The current accountability system already looks at overall performance and improvement in performance. As school systems benefit from the better of overall performance or improvement in performance, the overall rating already accounts for appropriate measures of improvement and thus represents the most appropriate level of scrutiny for the statutory standard. In response to public comment, subsection (b) was modified at adoption to specify that improvement, for the purposes of the rule, means an increase in the scaled score for the overall academic performance rating under TEC, Chapter 39, rather than a change from one overall performance rating category to another, higher performance rating category.

New subsection (c) identifies when the commissioner may exercise the authority to increase the level of intervention or sanction. One instance is when a school system has exceeded the statutory limits on when final action must be taken. The reasons could be a transition provision or multiple years when a school district received a Not Rated rating. If the school system has failed to show improvement in student performance, rather than allow continued non-performance for students, the commissioner may increase the level of intervention or sanction to ensure students receive access to a quality educational program. Another instance is when an intervening year does not otherwise count toward consecutive years of unacceptable performance but evidence shows that student performance has not improved. A school system should not benefit from ancillary events that impeded accountability when evidence clearly demonstrates that the school system has not improved the performance of its students. Further, as not all issues can be predicted, the commissioner would exercise this authority in situations when doing so is to fulfill the purpose of accountability. If a school system fails to show the ability to provide quality education opportunities to students, then action should be taken to swiftly intervene on behalf of the affected students.

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

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began June 1, 2018, and ended July 2, 2018. Following is a summary of the public comments received and responses.

Comment: The Texas Association of School Boards (TASB) commented that the definition of "Improvement" in proposed §97.1070(b) ignores the complexity of the state accountability system because the overall performance rating is composed of multiple data sets and subcategories. TASB argued that a district could be making progress in several subcategories but that this progress would not be immediately reflected in the overall rating and that the rule should be amended to provide greater flexibility to show improvement.

Response: The agency agrees and has modified §97.1070(b) at adoption. The adopted rule recognizes any increase in the scaled score for overall performance rating as "improvement" for purposes of this rule, even if the overall rating does not increase. By using the scaled score for the overall performance rating, the adopted rule recognizes progress in the components of the overall rating, as long as that component is used in the determination of the overall scaled score and that progress is not offset by regression in other areas.

Comment: TASB commented that the provision in proposed §97.1070(c)(2) that allows the commissioner to exercise authority when circumstances suggest that the lack of improvement requires an increased level of intervention is too open-ended and offers no guidance as to the circumstances that the commissioner would consider and may lead to inconsistent and unpredictable decisions.

Response: The agency disagrees. TEC, §39A.901, gives the commissioner the authority to increase the level state intervention or sanction whenever a review of the district's performance reveals a lack of improvement unless the commissioner finds good cause to maintain the current intervention. The rule reflects the discretion granted to the commissioner under the statute and provides guidance to districts that the level of intervention will only be increased (1) when the district shows a lack of improvement; (2) when circumstances suggest that the lack of improvement requires an increase in the level of intervention or sanction; and (3) when no good cause exists to maintain the current level of sanction. This gives the commissioner the flexibility to maintain the level on intervention and sanctions in some circumstances, despite the district showing a lack of improvement.

Comment: TASB commented that the provision allowing the commissioner to increase sanctions even in a year that does not otherwise count for determining interventions and sanctions could conflict with legislative initiatives, such as the Math Innovation Zones in TEC, §28.020, which allows a pause in interventions and sanctions in certain circumstances.

Response: The agency disagrees. When a district or campus shows a lack of improvement, the rule allows the commissioner the flexibility to find that circumstances suggest that the lack of improvement does not require an increased level of intervention or sanction. The commissioner also has the authority to find that good cause exists to maintain the current level of intervention or sanction. This flexibility allows the commissioner to respond to current and future legislative initiatives.

Comment: TASB commented that the proposed rule fails to clarify when good cause exists to maintain the current level of intervention or sanction. TASB objected to provisions in proposed §97.1070(d) that allow the commissioner to make determinations about good cause at any time and without specified criteria and argued that this will discourage districts from undertaking bold innovations for school turnaround. TASB argued that districts need to trust that their efforts will not be cut short because they did not improve rapidly enough.

Response: The agency disagrees. Districts can avoid the application of this provision by showing any improvement. An amendment to the rule at adoption relaxes this provision by allowing any increase in the district's overall scale score to meet the test for

improvement. Even when the district does not show improvement, the adopted rule allows the commissioner to determine that circumstances suggest that the lack of improvement does not require an increased level of intervention or sanction or that there is good cause to maintain the current status. These provisions allow the commissioner to respond to new and innovative turnaround efforts that cannot be anticipated at this time.

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

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

§97.1070. Increasing Intensity of Interventions and Sanctions.

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

(b) For purposes of this section, improvement means an increase in the scaled score for the overall academic performance rating under Texas Education Code (TEC), Chapter 39.

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

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

(2) circumstances suggest that the lack of improvement requires an increased level of intervention or sanction, even if the performance in a school year would not otherwise count toward consecutive years of unacceptable performance that would be considered in determining the level of intervention or sanction; or

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

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

The agency certifies that legal counsel has reviewed the 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 15, 2018.

TRD-201804907
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 5, 2018
Proposal publication date: June 1, 2018
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 78. SCOPE OF PRACTICE

22 TAC §78.14

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of 22 TAC §78.14 (Acupuncture). The repeal of this section is adopted without changes to the proposed text as published in the July 6, 2018, issue of the *Texas Register* (43 TexReg 4537) and will not be republished.

The Board is repealing this rule and adopting a new §78.14 in its place in a separate rulemaking action.

No comments were received regarding the repeal of this section.

This repeal is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statute, article, or rule is affected by this repeal.

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 15, 2018.

TRD-201804918
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Effective date: December 5, 2018
Proposal publication date: July 6, 2018
For further information, please call: (512) 305-6700

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22 TAC §78.14

The Texas Board of Chiropractic Examiners (Board) adopts new §78.14, concerning Acupuncture.

New §78.14 is adopted with changes to the proposed text as published in the July 20, 2018, issue of the *Texas Register* (43 TexReg 4817) and will be republished.

Background and Justification

The Board adopts the new §78.14 (with non-substantive changes made to the proposed version) to replace the Board's

previous acupuncture rule in order to promote a clearer understanding of the requirements for the practice of acupuncture as performed by doctors of chiropractic. The rule also delineates the differences between the way chiropractors practice acupuncture and the way that other Texas health professions do. The new rule clarifies the degree of regulatory oversight the Board exercises over the practice of acupuncture to safeguard the public while not imposing unnecessary economic burdens on either chiropractors who offer the acupuncture modality or on consumers.

Comments

The thirty-day comment period ended on August 20, 2018.

The Board received numerous comments regarding the proposed new rule, including from the Texas Chiropractic Association (TCA), the Texas Medical Association (TMA), the Texas Association of Acupuncture and Oriental Medicine (TAAOM), and eighty-seven individuals.

Comment: TCA urged the adoption of the proposed rule in its current form, but recommended the Board not adopt the proposed 200 hours of training in the use and administration of acupuncture in order for a chiropractor to receive a permit. TCA reiterated its position that increasing the training requirement from the current 100 hours is unnecessary to protect the public. Numerous other commenters also pointedly raised this issue. TCA further noted that it is inconsistent and arbitrary to impose this heightened regulatory burden on chiropractors when medical doctors, dentists, and physical therapists perform acupuncture with far less training.

Response: The Board agrees with TCA and the other commenters that the proposed increase in required training from 100 to 200 hours would impose an unnecessary economic and regulatory burden on chiropractors and students currently enrolled at chiropractic colleges without increasing public safety in any significant way. The Board notes that no evidence has been produced that the currently required 100 hours of training in acupuncture is inadequate to protect the public. The Board acknowledges that the increase in required hours could be seen as an economic barrier to market entry for newly licensed chiropractors, especially in light of the fact that other licensed health professionals are permitted to practice acupuncture with far fewer hours of training. The Board therefore has reduced the number of required hours from 200 to the existing 100.

Comment: Two commenters raised concerns about the proposed rule's permission to use the terms "Board Certified," "Board Certified in Chiropractic Acupuncture," and "Board Certified in Acupuncture as an adjunctive modality by the Texas Board of Chiropractic Examiners" in advertising by chiropractors. The concerns were the terms were confusing and too lengthy.

Response: The Board agrees in part and has modified the rule's language. The Board has kept the language allowing a chiropractor to use the terms "Board Certified" and "Board Certified in Chiropractic Acupuncture" if used in conjunction with the name of the nationally recognized certifying board and the specific credentials granted. The Board concurs that the advertising term "Board Certified in Acupuncture as an adjunctive modality by the Texas Board of Chiropractic Examiners" is too lengthy and may give the impression that the Board is acting as an accredited certifying board. Therefore, the Board has changed the term "certificate" to "permit" throughout the rule to make it clear that the Board is acknowledging a chiropractor's qualifications.

The Board has also eliminated the provision in the proposed rule that required the Board to issue a separate document to permit a chiropractor to practice acupuncture; the Board will instead include the permitting language on each renewal license issued to chiropractors who meet the rule's requirements.

Comment: Several individuals submitted comments urging the Board to include the practice of dry needling in this rule.

Response: The Board appreciates the comments but declines to address this issue as it is outside the bounds of this rule.

Comment: The Board received several comments from chiropractors who found the proposed rule's language confusing regarding the requirements for obtaining a permit to practice acupuncture, especially for those who have been successfully practicing acupuncture in Texas under the Board's current rule for several years.

Response: The Board agrees with the commenters that the language regarding the requirements for obtaining a permit in the proposed rule was unclear. The Board has changed what is now subsection (e) to be more precise.

The Board removed the requirement to provide patient records as proof of having practiced for at least ten years and substituted it with providing a written statement of having practiced acupuncture in a clinical setting, with the statement subject to Board verification. The Board believes the original requirement of providing redacted patient records, which could go back several years, was too onerous on chiropractors.

Comment: Several individuals said the continuing education provision in the proposed rule that required eight hours of acupuncture education for each two years of licensure was not clear.

Response: The Board agrees and has modified the language in what is now subsection (f) to state that a chiropractor permitted to practice acupuncture must complete a minimum of eight hours in Board-approved acupuncture courses every biennium.

Comment: One individual questioned why the rule's training requirements for acupuncture only allow for didactic, clinical, and practical training, but exclude online and distance learning options.

Response: The Board appreciates the comment, but declines to include those training methods at this time.

Comment: TMA expressed its strong opposition to the proposed rule on the grounds the Board lacks the legal authority to regulate the practice of acupuncture by chiropractors. TMA made no direct comments on the language of the proposed rule itself.

Response: The Board disagrees with TMA's position. Acupuncture or filiform needles used in the practice of acupuncture are non-incisive, meaning those needles do not cut or leave a wound when properly used. Texas courts have found that the Board's position is not unreasonable or inconsistent with Texas Occupations Code Chapter 201. Because the use of acupuncture or filiform needles is non-incisive, their use falls within the chiropractic scope of practice, and thus the Board has statutory authority to enact rules regulating that use.

Comment: Numerous licensed acupuncturists wrote to object to the proposed rule on nearly identical grounds, including objections that the Board lacks the legal authority to promulgate the rule, that the rule potentially endangers the public, and that the rule has the potential to cause economic harm to licensed

acupuncturists. These individuals made no direct comments on the language of the proposed rule itself.

Response: Regarding the objections concerning the Board's legal authority to promulgate the proposed rule, the Board disagrees and notes its response to similar comments by TMA above.

The Board disagrees that the public would somehow be at risk from the continued practice of acupuncture by chiropractors because of a lack of training. The Board again notes there is no empirical evidence that any person in Texas has been harmed by a chiropractor practicing acupuncture under either the Board's current rule, which requires 100 hours of training in acupuncture beyond the extensive training in physiology and anatomy all chiropractors receive in their four-year chiropractic college degree programs, or in the several decades before the current rule's adoption. This argument is further undercut by the fact that other Texas health professionals are permitted to practice acupuncture with far fewer hours of additional training or experience.

The Board also disagrees with the argument that allowing chiropractors to practice acupuncture would economically harm acupuncturists. Chiropractors and acupuncturists have both practiced acupuncture, albeit with differing philosophies, for several decades in Texas. In fact, chiropractors were safely practicing acupuncture in Texas long before the enactment of Texas Occupations Code Chapter 205. There is no evidence that acupuncturists have suffered any economic harm up to now, nor is there any to show there will be any future harm. The Board takes seriously its oversight mandate to protect the public health without imposing unnecessary economic costs on either chiropractors or consumers.

Comment: TAAOM submitted lengthy comments to the Board regarding the proposed rule.

Response: The Board disagrees with TAAOM's assertion that the Board has no authority to define acupuncture or to authorize the practice of acupuncture by its licensees. The Board does have such statutory authority. As noted above in the Board's response to TMA, acupuncture or filiform needles used in the practice of acupuncture are non-incisive, and thus within the scope of practice under Texas Occupations Code Chapter 201.

The Board declines to respond to TAAOM's comments concerning dry needling as that is outside the bounds of this rulemaking.

The Board agrees, in part, with TAAOM that the use of the term "board certification" could cause confusion. The rule has been changed to state that a chiropractor who meets the rule's requirements for the practice of acupuncture will be granted a permit to perform acupuncture as opposed to a certificate, so as not to give the impression that the chiropractor has been credentialed by the Board.

The Board disagrees with TAAOM's claim that the hours of training in acupuncture chiropractors receive are inadequate to protect the public. Doctors of chiropractic on average receive over 4200 hours of doctoral-level training that focuses on anatomy and physiology, which far exceeds the training an undergraduate-level acupuncturist receives. It is, therefore, incorrect to suggest that a chiropractor trained in acupuncture has a lesser understanding of physiological mechanics than does an acupuncturist.

The Board disagrees with TAAOM's insistence the Board increase the verification requirements for chiropractors who began practicing acupuncture before 2010 and have always done so safely before the Board may grant them permits. Because it lacks a legitimate public health rationale, TAAOM's position would only add unnecessary and burdensome economic costs on chiropractors. The Board believes the documentation the new rule requires of chiropractors who began practicing acupuncture before 2010 is more than sufficient to protect the public health.

The Board disagrees with TAAOM's position that a chiropractor who practices acupuncture should be prevented from advertising that fact. The practice of acupuncture is within a chiropractor's scope of practice. To deny a chiropractor the ability to advertise without a legitimate public safety rationale, as TAAOM urges the Board to do, is nothing more than the restriction of the economic freedom and commercial free speech rights of one profession for the benefit of another. The Board declines to impose such a limit.

The Board agrees with TAAOM that unnecessary references to other Board rules should be removed. Those references have been removed.

Statutory Authority

This new rule with changes is adopted under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statute, article, or rule is affected by this rule.

§78.14. Acupuncture.

(a) Acupuncture, and the related practices of acupressure and meridian therapy, includes methods for diagnosing and treating a patient by stimulating specific points on or within the musculoskeletal system by various means, including manipulation, heat, cold, pressure, vibration, laser, ultrasound, light electrocurrent, and the insertion of acupuncture needles or solid filiform needles for the purpose of obtaining a bio-positive reflex response by nerve stimulation.

(b) A licensee shall practice acupuncture only after obtaining a permit from the Texas Board of Chiropractic Examiners (Board).

(c) The Board shall place on each renewal license to practice chiropractic a statement that a licensee who has met all Board requirements is permitted to practice acupuncture. A licensee whose license does not contain the statement permitting the practice of acupuncture shall not practice or advertise the practice of acupuncture.

(d) A licensee with an acupuncture permit cannot delegate the performance of acupuncture.

(e) Requirements for an acupuncture permit:

(1) On or after the effective date of this rule, a licensee may receive an acupuncture permit from the Board by completing at least one hundred (100) hours of training in acupuncture and passing the National Board of Chiropractic Examiners' examination. The training must be provided by an accredited chiropractic college, or post-secondary university, or other educational or testing institution approved by the Board. Such training shall include didactic, clinical, and practical training in the practice of acupuncture, clean needle techniques, examination, and protocols that meet the blood-borne pathogen standard established by the Occupational Safety and Health Administration.

(2) A person who became a licensee after January 1, 2010, and before the effective date of this rule, who has been practicing acupuncture in compliance with previous Board rules, shall have until September 1, 2019, to obtain an acupuncture permit from the Board by passing the National Board of Chiropractic Examiners' standardized

certification examination in acupuncture and completing 100 hours of acupuncture training.

(3) A person who became a licensee before January 1, 2010, shall have until September 1, 2019, to obtain an acupuncture permit from the Board by having:

(A) Successfully completed and passed an examination in a one hundred (100) hour training course in acupuncture; or

(B) Successfully completed and passed either the National Board of Chiropractic Examiners' standardized certification examination in acupuncture or the examination offered by the National Certification Commission of Acupuncture before the effective date of this rule; or

(C) Successfully completed formal training along with providing a statement to the Board of having practiced acupuncture in clinical practice for at least ten years before January 1, 2010, and is in good standing with the Board and the regulatory entities of the other jurisdictions in which the licensee is licensed. The Board may audit any statement for accuracy.

(4) Documentation of acupuncture training shall be in the form of signed certificates of attendance or completion, or diplomas from course sponsors or instructors.

(f) A licensee permitted to practice acupuncture must complete a minimum of eight (8) hours in Board-approved acupuncture courses every biennium.

(g) A licensee shall not practice acupuncture until the licensee has submitted proof of compliance with subsection (e) and has received a permit from the Board.

(h) A licensee practicing acupuncture shall not advertise in a manner that suggests the licensee possesses a license to practice acupuncture issued by the Texas State Board of Acupuncture Examiners, including using any of the terms "acupuncturist," "licensed acupuncturist," "L.Ac.," "Traditional Chinese Medicine," or "degreed in acupuncture."

(i) A licensee's advertising may include the terms "Board Certified" or "Board Certified in Chiropractic Acupuncture" if it also clearly identifies the nationally recognized certifying board and credentials.

(j) Approved programs in clinical acupuncture or meridian therapy offered by accredited chiropractic colleges or universities are designed for doctors of chiropractic and other disciplines. These courses are not intended as a substitute for a full curriculum teaching traditional Chinese medicine; rather they focus on the principle, theory, scientific findings, and practical modern application of acupuncture as currently practiced by doctors of chiropractic.

(k) The practice of acupuncture by a licensee who has not complied with the requirements of this section constitutes unprofessional conduct and subjects the licensee to disciplinary action. A licensee who advertises acupuncture without first obtaining a permit also has engaged in unprofessional conduct.

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 15, 2018.

TRD-201804919

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General Counsel
Texas Board of Chiropractic Examiners
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Proposal publication date: July 20, 2018
For further information, please call: (512) 305-6700

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 216. CONTINUING COMPETENCY

22 TAC §§216.1 - 216.11

The Texas Board of Nursing (Board) adopts amendments to §§216.1 - 216.11, relating to *Continuing Competency.* The amendments are adopted with editorial and formatting changes to the proposed text published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6737). No substantive changes were made to the text of the rules as adopted, and none of the editorial or formatting changes materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Editorial changes were made to §§216.1(2)(A), 216.10(a), and 216.11 and formatting changes were made to §216.5, therefore, these rules will be republished.

Reasoned Justification

The amendments are being adopted under the authority of the Occupations Code §301.151 and are consistent with the statutory directives in the Occupations Code Chapter §301.303 and §301.307 for continuing competency programs.

Background

At its April 2018 meeting, the Board charged the Nursing Practice Advisory Committee (Committee) with reviewing Chapter 216 and making recommendations for changes. This charge stemmed from a request by the Texas Nurses Association (TNA) to allow additional topics to be credited as continuing nursing education (CNE) and, therefore, used for licensure renewal.

The Committee met on May 7, 2018, to address the Board's charge. The Committee considered two significant changes to the chapter. First, the Committee reviewed the activities that are currently accepted by the Board for CNE credit. Those activities include academic courses, program development and/or presentation, and authorship. The rule also clearly delineates the types of activities that are not appropriate for CNE credit. Those activities include basic life support or cardiopulmonary resuscitation courses, in-service programs, nursing refresher courses, orientation programs, economic courses for financial gain, liberal art courses, self-directed study, continuing medical education (unless meeting specified exceptions), and courses that focus on self-improvement, changes in attitude, self-therapy, and self-awareness.

In the past five to ten years, however, research has demonstrated that courses focusing on compassion fatigue, moral distress, fatigue, resilience, workplace violence, and nursing satisfaction have an impact on nursing practice, patient safety, and patient outcomes. The Committee reviewed examples of such evidence-based research, compiled by TNA, and then discussed the impact of the research on the Board's rule. Ultimately, the Committee determined that the Board should accept

CNE courses that demonstrate a link between a nurse's attitude and self-awareness and nursing practice and patient outcomes.

The Committee also reviewed the requirements related to older adult and geriatric care. The current rule contains prescriptive language regarding the information that must be included in these CNE courses, including information relating to elder abuse, age related memory changes and disease processes, chronic conditions, and end of life issues. However, the prescriptive nature of the current rule has made it difficult for some nurses to find courses that meet this requirement. As such, the amendments remove the prescriptive requirement from the rule and instead, provide that a CNE course relating to older adult and geriatric populations may include topical information, to include information related to elder abuse, age-related memory changes and disease processes, chronic conditions, end of life issues, health maintenance, and health promotion. This change is intended to make it easier for nurses to find courses that will meet the rule's requirements.

Finally, the amendments re-organize portions of the chapter's requirements, correct outdated references and grammatical errors, and include conforming language for consistency with other Board rules.

The Board considered the proposed amendments, the Committee's recommendations, and Board Staff's recommendations at its regularly scheduled Board meeting held on July 19 - 20, 2019, and voted to publish the proposed amendments in the *Texas Register* for public comment. The Board did not receive any comments on the proposal.

How the Sections Will Function.

Section 216.1 contains the definitions for the chapter. The majority of the changes to this section are non-substantive in nature and clarify existing terms and correct grammatical errors. There are a few changes, however, that are more substantive in nature.

First, the current rule text defines a *contact hour* as sixty consecutive minutes of participation in a learning activity. However, the amendments modify this definition to clarify that the number of contact hours will be determined by the Board recognized credentialing agency and/or provider offering the particular continuing education activity. This change makes it easier for nurses to determine the length of a CNE activity. The rule also adds a definition of *licensing period,* which should help clarify the length of time a nurse has to complete his/her CNE activities for licensure renewal. Finally, the amendments add a definition of *targeted continuing education.* This definition distinguishes between CNE activities that are specifically required by legislative directive or Board rule and CNE activities that nurses are free to choose themselves. Overall, the changes to this section are intended to clarify terms used throughout the rest of the chapter.

The changes to §216.2 are non-substantive in nature and provide clarity to the existing rule text.

The majority of the changes to §216.3 are non-substantive in nature and provide clarity to the existing rule text. One change to §216.3, however, is more substantive in nature. The current rule requires nurses whose practice includes older adult or geriatric populations to complete at least two contact hours of CNE relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult of geriatric populations. However, the rule currently prescribes the type of information such CNE must include, making it difficult for some nurses to find courses that meet the rule's requirements. Instead of including prescriptive requirements specifying the information that must be included in this CNE, the amended rule provides examples of topics that would be appropriate to include in CNE related to older adult or geriatric care. The intended result is to alleviate the burden of locating CNE courses that include every topic enumerated in the rule, but instead to locate courses that include similar content.

The changes to §216.4 are non-substantive in nature and provide clarity to the existing rule text.

The majority of the changes to §216.5 are non-substantive in nature and provide clarity to the existing rule text. One change is more substantive in nature, however. The rule provides an explanation of how the completion of academic coursework will translate into contact hours for purposes of continuing competency requirements. Under the amendments, one academic quarter hour will equate to ten contact hours, and one academic semester hour will equate to fifteen contact hours. This change clarifies the amount of credit a nurse will be given for completing academic coursework for purposes of continuing competency requirements and licensure renewal.

The majority of the changes to §216.6 are non-substantive in nature and provide clarity to the existing rule text. One change is more substantive in nature, however. The rule currently recognizes the completion of academic courses, program development and/or presentation, and authorship as alternative continuing education activities. The rule, however, also specifies the types of activities that are not credited as appropriate for CNE. Those activities include basic life support or cardiopulmonary resuscitation courses, in-service programs, nursing refresher courses, orientation programs, economic courses for financial gain, liberal art courses, self-directed study, continuing medical education (unless meeting specified exceptions), and courses that focus on self-improvement, changes in attitude, self-therapy, and self-awareness. Based upon research in the last five to ten years, the rule recognizes that courses focusing on compassion fatigue, moral distress, fatigue, resilience, workplace violence, and nursing satisfaction have an impact on nursing practice, patient safety, and patient outcomes and may be appropriate for CNE credit. CNE courses that demonstrate a link between a nurse's attitude and self-awareness and nursing practice and patient outcomes will be considered as appropriate CNE activities under the rule. This change provides additional opportunities for nurses to complete continuing competency activities required for licensure renewal, making the overall process less burdensome for licensees.

The changes to §216.7 are non-substantive in nature and provide clarity to the existing rule text.

The changes to §216.8 are non-substantive in nature and provide clarity to the existing rule text, particularly when describing the circumstances in which a licensee may be exempt from the completion of continuing competency requirements. The amendments clearly specify that a nurse may be exempt from completing general continuing competency requirements for renewal, but may still be required to complete certain targeted continuing competency requirements pursuant to legislative directive or Board rule. The amendments do not alter the existing requirements for nurses, but do clarify their responsibilities under the chapter.

The changes to §§216.9, 216.10, and 216.11 are non-substantive in nature and provide clarity to the existing rule text.

Overall, the amendments provide additional opportunities for nurses to meet their continuing competency obligations, allowing for more flexibility and innovation.

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, 301.303, and 301.307.

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.

Section 301.303(a) provides that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including: (1) completion of targeted continuing education programs; and (2) consideration of a license holder's professional portfolio, including certifications held by the license holder.

Section 301.303(b) provides that the Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period.

Section 301.303(c) states that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education.

Section 301.303(e) provides that the Board may adopt other rules as necessary to implement this section.

Section 301.303(f) states that the Board may assess each program and provider under this section a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

Section 301.303(g) states that the Board by rule may establish guidelines for targeted continuing education required under this chapter. The rules adopted under this subsection must address: (1) the nurses who are required to complete the targeted continuing education program; (2) the type of courses that satisfy the targeted continuing education requirement; (3) the time in which a nurse is required to complete the targeted continuing education; (4) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (5) any other requirement considered necessary by the board.

Section 301.307(a) states that, as part of a continuing competency program under Section 301.303, a license holder whose practice includes older adult or geriatric populations shall complete at least two hours of continuing education relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations.

Section 301.307(b) provides that the Board shall adopt rules implementing the requirement under Subsection (a) in accordance with the guidelines for targeted continuing education under Section 301.303(g).

Section 301.307(c) states that the Board may not require a license holder to complete more than six hours of continuing education under this section.

§216.1. Definitions.

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

(1) Academic course--A specific set of learning experiences offered in an accredited school, college or university.

(2) Advanced Practice Registered Nurse (APRN)--A registered nurse who:

(A) has completed a graduate-level advanced practice registered nursing education program that prepares him or her for one of the four APRN roles;

(B) has passed a national certification examination recognized by the Board that measures APRN role and population focused competencies;

(C) maintains continued competence as evidenced by re-certification/certification maintenance in the role and population focus area of licensure through the national certification program;

(D) practices by building on the competencies of registered nurses by demonstrating a greater depth and breadth of knowledge, a greater synthesis of data, and greater role autonomy, as permitted by state law;

(E) is educationally prepared to assume responsibility and accountability for health promotion and/or maintenance, as well as the assessment, diagnosis, and management of patient problems, including the use and prescription of pharmacologic and non-pharmacologic interventions in compliance with state law;

(F) has clinical experience of sufficient depth and breadth to reflect the intended practice; and

(G) has been granted a license to practice as an APRN in one of the four APRN roles and at least one population focus area recognized by the Board.

(3) Approved--Recognized as having met established standards and predetermined criteria of the:

(A) credentialing agencies recognized by the Board (applies to providers and programs); and

(B) certifying bodies accredited by a national certification accreditation agency recognized by the Board.

(4) Area of Practice--Any activity, assignment, or task in which the nurse utilized nursing knowledge, judgment, or skills during the licensing period. If a nurse does not have a current area of practice, the nurse may refer to his or her most recent area of practice.

(5) Audit--A random sample of licensees selected to verify satisfactory completion of the Board's requirements for continuing competency during a biennial licensing period.

(6) Authorship--Development and publication of a manuscript related to nursing and health care that is published in a nursing or health-related textbook or journal.

(7) Board--The Texas Board of Nursing.

(8) Certification--National nursing certification from an approved certifying body accredited by a national accreditation agency recognized by the Board.

(9) Competency--The application of knowledge and the interpersonal, decision-making and psychomotor skills expected for the nurse's practice role, within the context of public health, safety, and welfare.

(10) Contact hour--a measure of time, determined by Board recognized credentialing agencies and providers of continuing education, awarded to participants for successful completion of continuing education offerings.

(11) Continuing Nursing Education (CNE)--Programs and activities beyond the basic scholastic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of nursing practice, thus improving health care to the public.

(12) Continuing education offering--An organized educational program or activity approved through an external review process based on a predetermined set of criteria. The review is conducted by an organization(s) recognized by the Board to approve programs and providers.

(13) Credentialing agency--An organization recognized by the Board as having met nationally predetermined criteria to approve programs and providers of CNE.

(14) Licensing period--Period of time in which nursing licensure status is current; determined by the licensee's birth month and year, usually beginning on the first day of the month after the birth month and ending on the last day of the birth month. The specific time frame for initial licensure and for the immediate licensing period following renewal of a delinquent license or license reactivation may vary from six months to 29 months, as determined by Board policies; subsequent licensing periods will be two years in length.

(15) Prescriptive authority--Authorization granted to an APRN who meets the requirements to prescribe or order a drug or device, as set forth in Chapter 222 of this title (relating to Advanced Practice Registered Nurses with Prescriptive Authority).

(16) Program development and/or presentation--Formulation of the purpose statement, objectives and associated content and/or presentation of an approved CNE activity.

(17) Program number--A unique number assigned to a continuing education offering upon approval which shall identify it regardless of the number of times it is presented.

(18) Provider--An individual, partnership, organization, agency or institution approved by an organization recognized by the Board which offers continuing education programs and activities.

(19) Provider number--A unique number assigned to the provider of continuing education upon approval by the credentialing agency or organization.

(20) Shall, will, and must--Mandatory requirements.

(21) Targeted continuing education--Continuing education offerings beyond the basic scholastic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of nursing practice that are directed by statute and Board rules at specific levels of licensure and/or areas of practice.

§216.5. Additional Methods for Meeting Continuing Competency Requirements.

(a) Academic Courses. A licensee may receive CNE credit for attendance and completion of an academic course within the framework of a curriculum that leads to an academic degree in nursing or any academic course directly relevant to the licensee's area of nursing practice.

(1) Upon audit by the Board, the licensee must submit to the Board an official transcript indicating completion of the course with a grade of "C" or better, or a "Pass" on a Pass/Fail grading system.

(2) Contact hours may be obtained by this means for academic courses that were completed within the licensing period. CNE credit for academic courses will convert on the following basis: one academic quarter hour = 10 contact hours; one academic semester hour = 15 contact hours.

(b) Program Development and/or Presentation.

(1) A licensee may receive CNE credit for development and/or presentation of a program that is approved by one of the credentialing agencies or providers recognized by the Board.

(2) Upon audit by the Board, the licensee must submit to the Board on one page: the title of the program, program objectives, brief outline of content, name of credentialing agency that approved the program for contact hours, provider number, program number, dates and locations of the presentation, and number of contact hours.

(3) Contact hours for program development and/or presentation shall equal the number of contact hours awarded by a credentialing agency or provider recognized by the Board for the offering. Contact hours may be obtained by this means by the nurse(s) who developed and/or presented the qualifying program per licensing period; only distinct activities may be used to obtain contact hours by this means for a licensing period.

(c) Authorship.

(1) A licensee may receive CNE credit for development and publication of a manuscript related to nursing and health care that is published in a nursing or health-related textbook or journal.

(2) Upon audit by the Board, the licensee must submit to the Board a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work.

(3) One contact hour per distinct publication may be obtained by this means per licensing period.

§216.10. Appeals.

(a) Any individual who wishes to appeal a determination of noncompliance with the continuing competency requirements shall submit a letter of appeal within 20 days of notification of the audit results.

(b) The Board or its designee shall conduct a review in which the appellant may appear in person to present reasons why the audit decision should be set aside or modified.

(c) The decision of the Board after the appeal shall be considered final and binding.

§216.11. Consequences of Noncompliance.

Failure to comply with the Board's continuing competency requirements will result in the denial of license renewal.

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 15, 2018.

TRD-201804938
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Effective date: December 5, 2018
Proposal publication date: October 12, 2018
For further information, please call: (512) 305-6822

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.62

The Texas State Board of Pharmacy adopts amendments to §281.62, concerning Aggravating and Mitigating Factors. These amendments are adopted without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6589) and will not be republished.

The amendments update the factors which may merit an increase or decrease in the severity of disciplinary action imposed by the Board.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Proposal publication date: October 5, 2018
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22 TAC §281.65

The Texas State Board of Pharmacy adopts amendments to §281.65, concerning Schedule of Administrative Penalties. These amendments are adopted with changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6590) and will be republished.

The amendments update the administrative penalties the Board may assess in certain disciplinary matters.

The Board received comments from CVS Health and the National Association of Chain Drug Stores. CVS Health suggested modifying subparagraph §281.65(2)(H) to keep a maximum penalty and to set parameters for a significant loss. The Board declines to make these changes because that setting a quantity as to what would count as a significant loss would be arbitrary without taking into consideration particulars of the individual pharmacy and that setting a threshold would indicate to bad actors that as long as they keep their losses under that quantity they will not be subject to discipline. CVS Health and the National Association of Chain Drug Stores suggested changes to §281.65 that were not related to the proposed changes published in the *Texas Register.* These suggestions regarded the removal of certain violations against pharmacy license holder. The Board declines to vote on whether to adopt these changes as the Board believes they are not a logical outgrowth of the proposed changes published in the *Texas Register.*

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.65. Schedule of Administrative Penalties.

The board has determined that the assessment of an administrative penalty promotes the intent of §551.002 of the Act. In disciplinary matters, the board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

(1) The following violations by a pharmacist may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing to provide patient counseling: $1,000;

(B) failing to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A) of this title (relating to Operational Standards): $1,000;

(C) failing to clarify a prescription with the prescriber: $1,000;

(D) failing to properly supervise or improperly delegating a duty to a pharmacy technician: $1,000;

(E) failing to identify the dispensing pharmacist on required pharmacy records: $500;

(F) failing to maintain records of prescriptions: $500;

(G) failing to respond or failing to provide all requested records within the time specified in a board audit of continuing education records: $100 per hour of continuing education credit not provided;

(H) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $1,000;

(I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to $5,000;

(J) dispensing unauthorized prescriptions: up to $5,000;

(K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to $5,000;

(L) violating a disciplinary order of the Board or a contract under the program to aid impaired pharmacists or pharmacy students under Chapter 564 of the Act: $500;

(M) failing to report or to assure the report of a malpractice claim: $1,000;

(N) practicing pharmacy with a delinquent license: $500;

(O) operating a pharmacy with a delinquent license: $1,000;

(P) allowing an individual to perform the duties of a pharmacy technician without a valid registration: $1,000;

(Q) aiding and abetting the unlicensed practice of pharmacy, if the pharmacist knew or reasonably should have known that the person was unlicensed at the time: $2,500;

(R) unauthorized substitutions: $1,000;

(S) submitting false or fraudulent claims to third parties for reimbursement of pharmacy services: $1,000;

(T) selling, purchasing, or trading, or offering to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: $1,000;

(U) selling, purchasing, or trading, or offering to sell, purchase, or trade of prescription drug samples as provided by §281.7(a)(27) of this title (relating to Grounds for Discipline for a Pharmacist License): $1,000;

(V) failing to keep, maintain or furnish an annual inventory as required by §291.17 of this title (relating to Inventory Requirements): $1,000;

(W) failing to obtain training on the preparation of sterile pharmaceutical compounding: $1,000;

(X) failing to maintain the confidentiality of prescription records: $1,000;

(Y) failing to inform the board of any notification or information required to be reported by the Act or rules: $500;

(Z) failing to operate a pharmacy as provided by §291.11 of this title (relating to Operation of a Pharmacy): $1,000; and

(AA) accessing information submitted to the Prescription Monitoring Program in violation of §481.076 of the Controlled Substances Act: $1,000 - $2,500.

(2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing to provide patient counseling: $1,500;

(B) failing to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A) of this title: $1,500;

(C) failing to clarify a prescription with the prescriber: $1,500;

(D) failing to properly supervise or improperly delegating a duty to a pharmacy technician: $1,500;

(E) failing to identify the dispensing pharmacist on required pharmacy records: $500;

(F) failing to maintain records of prescriptions: $500;

(G) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $1,000;

(H) following an accountability audit, shortages of prescription drugs: dependent on the quantity involved with a minimum of $1,000;

(I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to $5,000;

(J) dispensing unauthorized prescriptions: up to $5,000;

(K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to $5,000;

(L) violating a disciplinary order of the Board: $1,000;

(M) failing to report or to assure the report of a malpractice claim: $1,500;

(N) allowing a pharmacist to practice pharmacy with a delinquent license: $1,000;

(O) operating a pharmacy with a delinquent license: $1,000;

(P) allowing an individual to perform the duties of a pharmacy technician without a valid registration: $3,000;

(Q) failing to comply with the reporting requirements to the Prescription Monitoring Program: $1,000;

(R) aiding and abetting the unlicensed practice of pharmacy, if an employee of the pharmacy knew or reasonably should have known that the person engaging in the practice of pharmacy was unlicensed at the time: $5,000;

(S) unauthorized substitutions: $1,000;

(T) submitting false or fraudulent claims to third parties for reimbursement of pharmacy services: $1,000;

(U) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: $1,000;

(V) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drug samples as provided by §281.8(b)(2) of this title (relating to Grounds for Discipline for a Pharmacy License): $1,000;

(W) failing to keep, maintain or furnish an annual inventory as required by §291.17 of this title: $2,500;

(X) failing to obtain training on the preparation of sterile pharmaceutical compounding: $2,000;

(Y) failing to maintain the confidentiality of prescription records: $1,000;

(Z) failing to inform the board of any notification or information required to be reported by the Act or rules: $1,000;

(AA) failing to operate a pharmacy as specified in §291.11 of this title: $3,000; and

(BB) operating a Class E or Class E-S pharmacy without a Texas licensed pharmacist-in-charge: $1,000.

(3) The following violations by a pharmacy technician may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failing to respond or failing to provide all requested records within the time specified in a board audit of continuing education records: $30 per hour of continuing education credit not provided;

(B) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: $500;

(C) violating a disciplinary Order of the Board: $250;

(D) performing the duties of a pharmacy technician without a valid registration: $250;

(E) failing to obtain training on the preparation of sterile pharmaceutical compounding: $500;

(F) failing to maintain the confidentiality of prescription records: $500;

(G) failing to inform the board of any notification or information required to be reported by the Act or rules: $250; and

(H) accessing information submitted to the Prescription Monitoring Program in violation of §481.076 of the Controlled Substances Act: $500 - $2,000.

(4) Any of the violations listed in this section may be appropriate for disposition by the administrative penalties in this section in conjunction with any other penalties in §281.61 of this title (relating to Definitions of Discipline Authorized).

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty or fine.

(6) The amount, to the extent possible, shall be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the aggravating and mitigating factors in §281.62 of this title (relating to Aggravating and Mitigating Factors);

(C) the amount necessary to deter a future violation; and

(D) any other matter that justice may require.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.17

The Texas State Board of Pharmacy adopts amendments to §291.17, concerning Inventory Requirements. These amendments are adopted with change to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6593).

The amendments clarify the requirements for taking inventories upon change of ownership and closure of pharmacies, and correct grammatical errors.

The Board made one change to correct a rule title referenced in 291.17(g)(4).

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.17. Inventory Requirements.

(a) General requirements.

(1) The pharmacist-in-charge shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person(s).

(2) The inventory shall be maintained in a written, typewritten, or printed form. An inventory taken by use of an oral recording device must be promptly transcribed.

(3) The inventory shall be kept in the pharmacy and shall be available for inspection for two years.

(4) The inventory shall be filed separately from all other records.

(5) The inventory shall be in a written, typewritten, or printed form and include all stocks of all controlled substances on hand on the date of the inventory (including any which are out-of-date).

(6) The inventory may be taken either as of the opening of business or as of the close of business on the inventory date.

(7) The inventory record shall indicate whether the inventory is taken as of the opening of business or as of the close of business on the inventory date. If the pharmacy is open 24 hours a day, the inventory record shall indicate the time that the inventory was taken.

(8) The person(s) taking the inventory shall make an exact count or measure of all controlled substances listed in Schedule II.

(9) The person(s) taking the inventory shall make an estimated count or measure of all controlled substances listed in Schedules III, IV, and V, unless the container holds more than 1,000 tablets or capsules in which case, an exact count of the contents must be made.

(10) The inventory of Schedule II controlled substances shall be listed separately from the inventory of Schedules III, IV, and V controlled substances.

(11) If the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(b) Initial inventory.

(1) A new Class A, Class A-S, Class C, Class C-S, or Class F pharmacy shall take an inventory on the opening day of business. Such inventory shall include all stocks of all controlled substances (including any out-of-date drugs).

(2) In the event the Class A, Class A-S, Class C, Class C-S, or Class F pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory.

(3) The initial inventory shall serve as the pharmacy's inventory until the next May 1, or until the pharmacy's regular general physical inventory date, at which time the Class A, Class A-S, Class C, Class C-S, or Class F pharmacy shall take an annual inventory as specified in subsection (c) of this section.

(c) Annual inventory.

(1) A Class A, Class A-S, Class C, Class C-S, or Class F pharmacy shall take an inventory on May 1 of each year, or on the pharmacy's regular general physical inventory date. Such inventory may be taken within four days of the specified inventory date and shall include all stocks of all controlled substances (including out-of-date drugs).

(2) A Class A, Class A-S, Class C, Class C-S, or Class F pharmacy applying for renewal of a pharmacy license shall include as a part of the pharmacy license renewal application a statement attesting that an annual inventory has been conducted, the date of the inventory, and the name of the person(s) taking the inventory.

(3) The person(s) taking the annual inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within three days after the day the inventory is completed, excluding Saturdays, Sundays, and federal holidays.

(d) Change of ownership.

(1) A Class A, Class A-S, Class C, Class C-S, or Class F pharmacy that changes ownership shall take an inventory on the date of the change of ownership. Such inventory shall include all stocks of all controlled substances (including any out-of-date drugs).

(2) Such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer.

(3) Transfer of any controlled substances listed in Schedule II shall require the use of official DEA order forms (Form 222).

(4) The person(s) taking the inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within three days after the day the inventory is completed, excluding Saturdays, Sundays, and federal holidays.

(e) Closed pharmacies.

(1) The pharmacist-in-charge of a Class A, Class A-S, Class C, Class C-S, or Class F pharmacy that ceases to operate as a pharmacy shall forward to the board, within 10 days of the cessation of operation, a statement attesting that an inventory of all controlled substances on hand has been conducted, the date of closing, and a statement attesting the manner by which the dangerous drugs and controlled substances possessed by such pharmacy were transferred or disposed.

(2) The person(s) taking the inventory and the pharmacist-in-charge shall indicate the time the inventory was taken (as specified in subsection (a)(7) of this section) and shall sign and date the inventory with the date the inventory was taken. The signature of the pharmacist-in-charge and the date of the inventory shall be notarized within three days after the day the inventory is completed, excluding Saturdays, Sundays, and federal holidays.

(f) Additional requirements for Class C and Class C-S pharmacies.

(1) Perpetual inventory.

(A) A Class C or Class C-S pharmacy shall maintain a perpetual inventory of all Schedule II controlled substances.

(B) The perpetual inventory shall be reconciled on the date of the annual inventory.

(2) Annual inventory. The inventory of the Class C or Class C-S pharmacy shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory of the pharmacy shall be listed separately, as follows:

(A) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(B) the inventory of drugs on hand in all other departments shall be identified by department.

(g) Change of pharmacist-in-charge of a pharmacy.

(1) On the date of the change of the pharmacist-in-charge of a Class A, Class A-S, Class C, Class C-S, or Class F pharmacy, an inventory shall be taken. Such inventory shall include all stocks of all controlled substances (including any out-of-date drugs).

(2) This inventory shall constitute, for the purpose of this section, the closing inventory of the departing pharmacist-in-charge and the beginning inventory of the incoming pharmacist-in-charge.

(3) If the departing and the incoming pharmacists-in-charge are unable to conduct the inventory together, a closing inventory shall be conducted by the departing pharmacist-in-charge and a new and separate beginning inventory shall be conducted by the incoming pharmacist-in-charge.

(4) The incoming pharmacist-in-charge shall be responsible for notifying the board within 10 days, as specified in §291.3 of this title (relating to Required Notifications), that a change of pharmacist-in-charge has occurred.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §291.28

The Texas State Board of Pharmacy adopts amendments to §291.28, concerning Access to Confidential Records. These amendments are adopted without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6595).

The amendments update the time frame in which a pharmacy must respond to a request for confidential records and the format in which the records may be provided to be consistent with §181.102 of the Health and Safety Code.

The Board received comments from Ciox Health suggesting that the term patient's agent be replaced with personal representative or that a definition of patient's agent be included. The Board declines to make this change as the term patient's agent is used throughout the Board rules and a change in terminology for this subsection would cause confusion. The comments also suggest that the time frame be changed from 15 days to 30 days, that an extension of 15 days be provided, and that the rule only apply to third party requestors. The Board declines to make these changes as they would be in conflict with section 181.102 of the Health and Safety Code.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

The Texas State Board of Pharmacy adopts amendments to §291.34, concerning Records. These amendments are adopted without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6596).

The amendments clarify that a rubber stamp may not be used as the signature of a practitioner on written prescription drug orders, allow the utilization of and specify recordkeeping requirements for prescription drug orders dispensed for patients institutionalized in licensed health care institutions, as authorized in Title 40, Part 1, Chapter 19 of the Texas Administrative Code, allow a pharmacist to dispense a quantity less than indicated on the original prescription at the request of the patient or patient's agent, and correct grammatical errors.

The Board received comments from a pharmacist who identified his/herself as E.C.S. expressing concern that allowing a pharmacist to dispense a quantity less than indicated on the original prescription at the request of the patient or patient's agent could result in pharmacies or insurance companies coercing patients into consenting to a decreased quantity of a prescription. The Board declined the suggestion to not adopt this amendment, because the Board is adopting as rule a currently existing enforcement policy recognizing that a patient may not want to receive the prescribed quantity all at one time and allowing the patient to request to a receive a smaller quantity, and this amendment would not allow the pharmacist nor a third party payor to decrease the quantity of a prescription without prescriber or patient consent.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74

The Texas State Board of Pharmacy adopts amendments to §291.74 concerning Operational Standards. These amendments are adopted with changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6601). The changes are to correct Texas Administrative Code references. The section will be republished.

The amendments update the requirements for drug regimen review as authorized by §562.1011(i) of the Texas Pharmacy Act.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551- 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551- 569, Texas Occupations Code.

§291.74. Operational Standards.

(a) Licensing requirements.

(1) A Class C pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class C pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(3) A Class C pharmacy which changes location and/or name shall notify the board of the change as specified in §291.3 of this title.

(4) A Class C pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change following the procedures in §291.3 of this title.

(5) A Class C pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

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

(7) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(8) A Class C pharmacy, licensed under the Act, §560.051(a)(3), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1) (Community Pharmacy (Class A)) or the Act, §560.051(a)(2) (Nuclear Pharmacy (Class B)), is not required to secure a license for the such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class C pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations).

(10) Class C pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class C-S pharmacy.

(11) A Class C pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(12) A Class C pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Central Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(13) A Class C pharmacy with an ongoing clinical pharmacy program that proposes to allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist shall make application to the board as follows.

(A) The pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:

(i) name, address, and pharmacy license number;

(ii) name and license number of the pharmacist-in-charge;

(iii) name and registration numbers of the pharmacy technicians;

(iv) anticipated date the pharmacy plans to begin allowing a pharmacy technician to verify the accuracy of work performed by another pharmacy technician;

(v) documentation that the pharmacy has an ongoing clinical pharmacy program; and

(vi) any other information specified on the application.

(B) The pharmacy may not allow a pharmacy technician to check the work of another pharmacy technician until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(C) Every two years, in connection with the application for renewal of the pharmacy license, the pharmacy shall provide updated documentation that the pharmacy continues to have an ongoing clinical pharmacy program as specified in subparagraph (A)(v) of this paragraph.

(14) A rural hospital that wishes to allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title (relating to Personnel), shall make application to the board as follows.

(A) Prior to allowing a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title, the pharmacist-in-charge must submit an application on a form provided by the board, containing the following information:

(i) name, address, and pharmacy license number;

(ii) name and license number of the pharmacist-in-charge;

(iii) name and registration number of the pharmacy technicians;

(iv) proposed date the pharmacy wishes to start allowing pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title;

(v) documentation that the hospital is a rural hospital with 75 or fewer beds and that the rural hospital is either:

(I) located in a county with a population of 50,000 or less as defined by the United States Census Bureau in the most recent U.S. census; or

(II) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital; and

(vi) any other information specified on the application.

(B) A rural hospital may not allow a pharmacy technician to perform the duties specified in §291.73(e)(2)(D) of this title until the board has reviewed and approved the application and issued an amended license to the pharmacy.

(C) Every two years in conjunction with the application for renewal of the pharmacy license, the pharmacist-in-charge shall update the application for pharmacy technicians to perform the duties specified in §291.73(e)(2)(D) of this title.

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) The institutional pharmacy shall be properly lighted and ventilated.

(E) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and/or freezer shall be maintained within a range compatible with the proper storage of drugs.

(F) If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) The institutional pharmacy shall store antiseptics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The institutional pharmacy shall be enclosed and capable of being locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) Equipment and supplies. Institutional pharmacies distributing medication orders shall have the following equipment:

(1) data processing system including a printer or comparable equipment; and

(2) refrigerator and/or freezer and a system or device (e.g., thermometer) to monitor the temperature to ensure that proper storage requirements are met.

(d) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and regulations; and

(D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text;

(3) a current or updated reference on injectable drug products;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal;

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph; and

(v) The pharmacist shall verify the withdrawal of drugs from the pharmacy and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable:

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy;

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices;

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph;

(iv) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days; and

(v) The pharmacist shall perform a drug regimen review as specified in subsection (g)(1)(B) of this section as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed seven (7) days; or

(II) If the facility has an average inpatient daily census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours.

(III) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (B)(v)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable:

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal of drugs from the pharmacy after a reasonable interval, but in no event may such interval exceed seven days.

(3) Rural hospitals. In rural hospitals when a pharmacy technician performs the duties listed in §291.73(e)(2)(D) of this title, the following is applicable:

(A) the pharmacy technician shall make a record of all drugs distributed from the pharmacy. The record shall be maintained in the pharmacy for two years and contain the following information:

(i) name of patient or location where floor stock is distributed;

(ii) name of device or drug, strength, and dosage form;

(iii) dose prescribed or ordered;

(iv) quantity distributed;

(v) time and date of the distribution; and

(vi) signature (first initial and last name or full signature) or electronic signature of nurse or practitioner that verified the actions of the pharmacy technician.

(B) The original or direct copy of the medication order may substitute for the record specified in subparagraph (A) of this paragraph, provided the medication order meets all the requirements of subparagraph (A) of this paragraph.

(C) The pharmacist shall:

(i) verify and document the verification of all distributions made from the pharmacy in the absence of a pharmacist as soon as practical, but in no event more than seven (7) days from the time of such distribution;

(ii) perform a drug regimen review for all medication orders as specified in subsection (g)(1)(B) of this section and document such verification including any discrepancies noted by the pharmacist as follows:

(I) If the facility has an average daily inpatient census of ten or less, the pharmacist shall perform the drug review as soon as practical, but in no event more than seven (7) days from the time of such distribution; or

(II) If the facility has an average daily inpatient census above ten, the pharmacist shall perform the drug review after a reasonable interval, but in no event may such interval exceed 96 hours;

(III) The average daily inpatient census shall be calculated by hospitals annually immediately following the submission of the hospital's Medicare Cost Report and the number used for purposes of subparagraph (C)(ii)(I) and (II) of this paragraph shall be the average of the inpatient daily census in the report and the previous two reports for a three year period;

(iii) review any discrepancy noted by the pharmacist with the pharmacy technician(s) and make any change in procedures or processes necessary to prevent future problems; and

(iv) report any adverse events that have a potential for harm to a patient to the appropriate committee of the hospital that reviews adverse events.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets the requirements as specified in §291.16 of this title (relating to Samples).

(D) All drugs shall be stored at the proper temperatures, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility. For the purpose of this section, a formulary is a compilation of pharmaceuticals that reflects the current clinical judgment of a facility's medical staff.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(C) A practitioner may grant approval for pharmacists at the facility to interchange, in accordance with the facility's formulary, for the prescribed drugs on the practitioner's medication orders provided:

(i) the pharmacy and therapeutics committee has developed a formulary;

(ii) the formulary has been approved by the medical staff committee of the facility;

(iii) there is a reasonable method for the practitioner to override any interchange; and

(iv) the practitioner authorizes pharmacists in the facility to interchange on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(3) Prepackaging of drugs.

(A) Distribution within a facility.

(i) Drugs may be prepackaged in quantities suitable for internal distribution by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Distribution to other Class C (Institutional) pharmacies under common ownership.

(i) Drugs may be prepackaged in quantities suitable for distribution to other Class C (Institutional) pharmacies under common ownership by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature;

(IV) quantity of the drug, if the quantity is greater than one; and

(V) name of the facility responsible for prepackaging the drug.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker;

(X) name, initials, or electronic signature of the responsible pharmacist; and

(XI) name of the facility receiving the prepackaged drug.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(v) The pharmacy shall have written procedure for the recall of any drug prepackaged for another Class C Pharmacy under common ownership. The recall procedures shall require:

(I) notification to the pharmacy to which the prepackaged drug was distributed;

(II) quarantine of the product if there is a suspicion of harm to a patient;

(III) a mandatory recall if there is confirmed or probable harm to a patient; and

(IV) notification to the board if a mandatory recall is instituted.

(4) Sterile preparations prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location, if not immediately administered;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (2)(C) of this subsection.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Pharmacy technicians and pharmacy technician trainees may not receive verbal medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) pharmaceutical care services;

(II) handling, storage and disposal of cytotoxic drugs and waste;

(III) disposal of unusable drugs and supplies;

(IV) security;

(V) equipment;

(VI) sanitation;

(VII) reference materials;

(VIII) drug selection and procurement;

(IX) drug storage;

(X) controlled substances;

(XI) investigational drugs, including the obtaining of protocols from the principal investigator;

(XII) prepackaging and manufacturing;

(XIII) stop orders;

(XIV) reporting of medication errors, adverse drug reactions/events, and drug product defects;

(XV) physician orders;

(XVI) floor stocks;

(XVII) drugs brought into the facility;

(XVIII) furlough medications;

(XIX) self-administration;

(XX) emergency drug supply;

(XXI) formulary;

(XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;

(XXIII) control of drug samples;

(XXIV) outdated and other unusable drugs;

(XXV) routine distribution of patient medication;

(XXVI) preparation and distribution of sterile preparations;

(XXVII) handling of medication orders when a pharmacist is not on duty;

(XXVIII) use of automated compounding or counting devices;

(XXIX) use of data processing and direct imaging systems;

(XXX) drug administration to include infusion devices and drug delivery systems;

(XXXI) drug labeling;

(XXXII) recordkeeping;

(XXXIII) quality assurance/quality control;

(XXXIV) duties and education and training of professional and nonprofessional staff;

(XXXV) procedures for a pharmacy technician to verify the accuracy of work performed by another pharmacy technician, if applicable;

(XXXVI) operation of the pharmacy when a pharmacist in not on-site; and

(XXXVII) emergency preparedness plan, to include continuity of patient therapy and public safety.

(6) Discharge Prescriptions. Discharge prescriptions must be dispensed and labeled in accordance with §291.33 of this title (relating to Operational Standards) except that certain medications packaged in unit-of-use containers, such as metered-dose inhalers, insulin pens, topical creams or ointments, or ophthalmic or otic preparation that are administered to the patient during the time the patient was a patient in the hospital, may be provided to the patient upon discharge provided the pharmacy receives a discharge order and the product bears a label containing the following information:

(A) name of the patient;

(B) name and strength of the medication;

(C) name of the prescribing or attending practitioner;

(D) directions for use;

(E) duration of therapy (if applicable); and

(F) name and telephone number of the pharmacy.

(g) Pharmaceutical care services.

(1) The pharmacist-in-charge shall assure that at least the following pharmaceutical care services are provided to patients of the facility.

(A) Drug utilization review. A systematic ongoing process of drug utilization review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(B) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate medication orders and patient medication records for:

(I) known allergies;

(II) rational therapy--contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions;

(X) proper utilization, including overutilization or underutilization; and

(XI) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(ii) The drug regimen review shall be conducted on a prospective basis when a pharmacist is on duty, except for an emergency order, and on a retrospective basis as specified in subsection (e)(1) or (e)(3) of this section when a pharmacist is not on duty.

(iii) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(iv) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(C) Education. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies that assure that:

(i) the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use; and

(ii) health care providers are provided with patient specific drug information.

(D) Patient monitoring. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies to ensure that the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider.

(2) Other pharmaceutical care services which may be provided by pharmacists in the facility include, but are not limited to, the following:

(A) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(B) administering immunizations and vaccinations under written protocol of a physician;

(C) managing patient compliance programs;

(D) providing preventative health care services; and

(E) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(h) Emergency rooms.

(1) During the times a pharmacist is on duty in the facility any prescription drugs supplied to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty in the facility, the following is applicable for supplying prescription drugs to be taken home by the patient for self-administration from the emergency room. If the patient has been admitted to the emergency room and assessed by a practitioner at the hospital, the following procedures shall be observed in supplying prescription drugs from the emergency room.

(A) Dangerous drugs and/or controlled substances may only be supplied in accordance with the system of control and accountability for dangerous drugs and/or controlled substances administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(B) Only dangerous drugs and/or controlled substances listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs and/or controlled substances of the nature and type to meet the immediate needs of emergency room patients.

(C) Dangerous drugs and/or controlled substances may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including necessary auxiliary labels) by the institutional pharmacy.

(D) At the time of delivery of the dangerous drugs and/or controlled substances, the practitioner or licensed nurse under the supervision of a practitioner shall appropriately complete the label with at least the following information:

(i) name, address, and phone number of the facility;

(ii) date supplied;

(iii) name of practitioner;

(iv) name of patient;

(v) directions for use;

(vi) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(vii) quantity supplied; and

(viii) unique identification number.

(E) The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient and explain the correct use of the drug.

(F) A perpetual record of dangerous drugs and/or controlled substances supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(v) quantity supplied; and

(vi) unique identification number.

(G) The pharmacist-in-charge, or staff pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(i) Radiology departments.

(1) During the times a pharmacist is on duty, any prescription drugs dispensed to an outpatient, including radiology department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty, the following procedures shall be observed in supplying prescription drugs from the radiology department.

(A) Prescription drugs may only be supplied to patients who have been scheduled for an x-ray examination at the facility.

(B) Prescription drugs may only be supplied in accordance with the system of control and accountability for prescription drugs administered or supplied from the radiology department and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only prescription drugs listed on the radiology drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's radiology committee (or like group or persons responsible for policy in that department) and shall consist of drugs for the preparation of a patient for a radiological procedure.

(D) Prescription drugs may only be supplied in prepackaged quantities in suitable containers and prelabeled by the institutional pharmacy with the following information:

(i) name and address of the facility;

(ii) directions for use;

(iii) name and strength of the prescription drug--if generic name, the name of the manufacturer or distributor of the prescription drug;

(iv) quantity;

(v) facility's lot number and expiration date; and

(vi) appropriate ancillary label(s).

(E) At the time of delivery of the prescription drug, the practitioner or practitioner's agent shall complete the label with the following information:

(i) date supplied;

(ii) name of physician;

(iii) name of patient; and

(iv) unique identification number.

(F) The practitioner or practitioner's agent shall give the appropriately labeled, prepackaged prescription drug to the patient.

(G) A perpetual record of prescription drugs supplied from the radiology department shall be maintained in the radiology department. Such records shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the prescription drug; or if no brand name, then the generic name, strength, dosage form, and the name of the manufacturer or distributor of the prescription drug;

(v) quantity supplied; and

(vi) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(j) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with unlabeled drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated medication supply systems.

(A) Authority to use automated medication supply systems. A pharmacy may use an automated medication supply system to fill medication orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated medication supply system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated medication supply system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated medication supply system to fill medication orders shall operate according to a written program for quality assurance of the automated medication supply system which:

(i) requires continuous monitoring of the automated medication supply system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated medication supply system is used to store or distribute medications for administration pursuant to medication orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated medication supply system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review and approval of each original or new medication order prior to withdrawal from the automated medication supply system:

(-a-) before the order is filled when a pharmacist is on duty except for an emergency order;

(-b-) retrospectively within 72 hours in a facility with a full-time pharmacist when a pharmacist is not on duty at the time the order is made; or

(-c-) retrospectively within 7 days in a facility with a part-time or consultant pharmacist when a pharmacist is not on duty at the time the order is made;

(III) provide for access to the automated medication supply system for stocking and retrieval of medications which is limited to licensed healthcare professionals, pharmacy technicians, or pharmacy technician trainees acting under the supervision of a pharmacist;

(IV) provide that a pharmacist is responsible for the accuracy of the restocking of the system. The actual restocking may be performed by a pharmacy technician or pharmacy technician trainee;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated medication supply system;

(VI) require a prospective or retrospective drug regimen review is conducted as specified in subsection (g) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated medication supply system.

(ii) A pharmacy which uses an automated medication supply system to fill medication orders shall, at least annually, re-

view its written policies and procedures, revise them if necessary, and document the review.

(D) Automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department (e.g., Pyxis). A pharmacy technician or pharmacy technician trainee may restock an automated medication supply system located outside of the pharmacy department with prescription drugs provided:

(i) prior to distribution of the prescription drugs a pharmacist verifies that the prescription drugs pulled to stock the automated supply system match the list of prescription drugs generated by the automated medication supply system except as specified in §291.73(e)(2)(C)(ii) of this title; or

(ii) all of the following occur:

(I) the prescription drugs to restock the system are labeled and verified with a machine readable product identifier, such as a barcode;

(II) either:

(-a-) the drugs are in tamper evident product packaging, packaged by an FDA registered repackager or manufacturer, that is shipped to the pharmacy; or

(-b-) if any manipulation of the product occurs in the pharmacy prior to restocking, such as repackaging or extemporaneous compounding, the product must be checked by a pharmacist; and

(III) quality assurance audits are conducted according to established policies and procedures to ensure accuracy of the process.

(E) Recovery Plan. A pharmacy which uses an automated medication supply system to store or distribute medications for administration pursuant to medication orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated medication supply system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated medication supply system is experiencing downtime;

(ii) procedures for response when an automated medication supply system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board and other appropriate agencies whenever an automated medication supply system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Verification of medication orders prepared by the pharmacy department through the use of an automated medication supply system. A pharmacist must check drugs prepared pursuant to medication orders to ensure that the drug is prepared for distribution accurately as prescribed. This paragraph does not apply to automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department.

(A) This check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed preparation of the medication order and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated medication supply system contains unlabeled stock drugs, a pharmacist verifies that those drugs have been accurately stocked; and

(II) a pharmacist checks the accuracy of the data entry of each original or new medication order entered into the automated medication supply system before the order is filled.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The medication order preparation process must be fully automated from the time the pharmacist releases the medication order to the automated system until a completed medication order, ready for delivery to the patient, is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated medication supply system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated medication supply system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after a drug is prepared for distribution but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) The final check of a drug prepared pursuant to a medication order shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new medication order.

(ii) the medication order is prepared, labeled, and made ready for delivery to the patient in compliance with Class C (Institutional) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the medication order has been prepared safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. NON-RESIDENT PHARMACY (CLASS E)

22 TAC §291.104

The Texas State Board of Pharmacy adopts amendments to §291.104, concerning Operational Standards. These amendments are adopted with changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6611). This section will be republished.

The amendments update the time period to report required prescription information from a Class E pharmacy to the Texas Prescription Monitoring Program, to be consistent with §481.074(q) of the Texas Controlled Substances Act (Chapter 481, Health and Safety Code) and correct grammatical errors.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.104. Operational Standards.

(a) Licensing requirements.

(1) A Class E pharmacy shall register with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) On initial application, the pharmacy shall follow the procedures specified in §291.1 of this title (relating to Pharmacy License Application) and then provide the following additional information specified in §560.052(c) and (f) of the Act (relating to Qualifications):

(A) evidence that the applicant holds a pharmacy license, registration, or permit issued by the state in which the pharmacy is located;

(B) the name of the owner and pharmacist-in-charge of the pharmacy for service of process;

(C) evidence of the applicant's ability to provide to the board a record of a prescription drug order dispensed by the applicant to a resident of this state not later than 72 hours after the time the board requests the record;

(D) an affidavit by the pharmacist-in-charge which states that the pharmacist has read and understands the laws and rules relating to a Class E pharmacy;

(E) proof of creditworthiness; and

(F) an inspection report issued not more than two years before the date the license application is received and conducted by the pharmacy licensing board in the state of the pharmacy's physical location.

(i) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the state's licensing board does not conduct inspections as follows:

(I) an individual approved by the board who is not employed by the pharmacy but acting as a consultant to inspect the pharmacy;

(II) an agent of the National Association of Boards of Pharmacy;

(III) an agent of another State Board of Pharmacy; or

(IV) an agent of an accrediting body, such as the Joint Commission on Accreditation of Healthcare Organizations.

(ii) The inspection must be substantively equivalent to an inspection conducted by the board.

(3) On renewal of a license, the pharmacy shall complete the renewal application provided by the board and, as specified in §561.0031 of the Act, provide an inspection report issued not more than three years before the date the renewal application is received

and conducted by the pharmacy licensing board in the state of the pharmacy's physical location.

(A) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the state's licensing board does not conduct inspections as follows:

(i) an individual approved by the board who is not employed by the pharmacy but acting as a consultant to inspect the pharmacy;

(ii) an agent of the National Association of Boards of Pharmacy;

(iii) an agent of another State Board of Pharmacy; or

(iv) an agent of an accrediting body, such as the Joint Commission on Accreditation of Healthcare Organizations.

(B) The inspection must be substantively equivalent to an inspection conducted by the board.

(4) A Class E pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(5) A Class E pharmacy which changes location and/or name shall notify the board of the change as specified in §291.3 of this title.

(6) A Class E pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title.

(7) A Class E pharmacy shall notify the board in writing within ten days of closing.

(8) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

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

(10) The board may grant an exemption from the licensing requirements of this Act on the application of a pharmacy located in a state of the United States other than this state that restricts its dispensing of prescription drugs or devices to residents of this state to isolated transactions.

(11) A Class E pharmacy engaged in the centralized dispensing of prescription drug or medication orders shall comply with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(12) A Class E pharmacy engaged in central processing of prescription drug or medication orders shall comply with the provisions of §291.123 of this title (relating to Central Prescription or Medication Order Processing).

(13) A Class E pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(14) Class E pharmacy personnel shall not compound sterile preparations unless the pharmacy has applied for and obtained a Class E-S pharmacy.

(15) A Class E pharmacy, which operates as a community type of pharmacy which would otherwise be required to be licensed under the Act §560.051(a)(1) (Community Pharmacy (Class A)), shall comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Requirements), contained in Community Pharmacy (Class A); or which operates as a nuclear type of pharmacy which would otherwise be required to be licensed under the Act §560.051(a)(2) (Nuclear Pharmacy (Class B)), shall comply with the provisions of §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(b) Prescription dispensing and delivery.

(1) General.

(A) All prescription drugs and/or devices shall be dispensed and delivered safely and accurately as prescribed.

(B) The pharmacy shall maintain adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of packaging material and devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(C) The pharmacy shall utilize a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(D) All pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(E) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(F) Subparagraph (E) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(2) Drug regimen review.

(A) For the purpose of promoting therapeutic appropriateness, a pharmacist shall prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(i) inappropriate drug utilization;

(ii) therapeutic duplication;

(iii) drug-disease contraindications;

(iv) drug-drug interactions;

(v) incorrect drug dosage or duration of drug treatment;

(vi) drug-allergy interactions; and

(vii) clinical abuse/misuse.

(B) Upon identifying any clinically significant conditions, situations, or items listed in subparagraph (A) of this paragraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(3) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) the name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self-monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication shall be:

(i) provided to new and existing patients of a pharmacy with each new prescription drug order. A new prescription drug order is one that has not been dispensed by the pharmacy to the patient in the same dosage and strength within the last year;

(ii) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(iv) reinforced with written information. The following is applicable concerning this written information:

(I) Written information must be in plain language designed for the patient and printed in an easily readable font comparable to but no smaller than ten-point Times Roman. This information may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the information in an electronic format and the pharmacy documents the request.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) The written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may orally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(E) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(F) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(G) Upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription and that a pharmacist is available to discuss the patient's prescription and provide information.

(H) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(4) Labeling. At the time of delivery, the dispensing container shall bear a label that contains the following information:

(A) the name, physical address, and phone number of the pharmacy;

(B) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication;

(C) either on the prescription label or the written information accompanying the prescription, the statement, "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement; and

(D) any other information that is required by the pharmacy or drug laws or rules in the state in which the pharmacy is located.

(c) Substitution requirements.

(1) Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located a pharmacist in a Class E pharmacy may dispense a generically equivalent drug or interchangeable biological product and shall comply with the provisions of §309.3 of this title (relating to Substitution Requirements) and §309.7 of this title (relating to Dispensing Responsibilities).

(2) The pharmacy must include on the prescription order form completed by the patient or the patient's agent information that clearly and conspicuously:

(A) states that if a less expensive generically equivalent drug or interchangeable biological product is available for the brand prescribed, the patient or the patient's agent may choose between the generically equivalent drug or interchangeable biological product and the brand prescribed; and

(B) allows the patient or the patient's agent to indicate the choice of the generically equivalent drug or interchangeable biological product or the brand prescribed.

(d) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This subsection does not apply to generic substitution. For generic substitution, see the requirements of subsection (c) of this section.

(1) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(A) a description of the change;

(B) the reason for the change;

(C) whom to notify with questions concerning the change; and

(D) instructions for return of the drug if not wanted by the patient.

(2) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(A) the date of the notification;

(B) the method of notification;

(C) a description of the change; and

(D) the reason for the change.

(e) Transfer of Prescription Drug Order Information. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, a pharmacist in a Class E pharmacy may not refuse to transfer prescriptions to another pharmacy that is making the transfer request on behalf of the patient. The transfer of original prescription information must be done within four business hours of the request.

(f) Prescriptions for Schedules II - V controlled substances. Unless compliance would violate the pharmacy or drug laws or rules in the state in which the pharmacy is located, a pharmacist in a Class E pharmacy who dispenses a prescription for a Schedules II - V controlled substance for a resident of Texas shall electronically send the prescription information to the Texas State Board of Pharmacy as specified in §315.6 of this title (relating to Pharmacy Responsibility - Electronic Reporting) not later than the next business day after the prescription is dispensed.

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-201804957
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Executive Director
Texas State Board of Pharmacy
Effective date: December 6, 2018
Proposal publication date: October 5, 2018
For further information, please call: (512) 305-8010

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.129

The Texas State Board of Pharmacy adopts amendments to §291.129, concerning Satellite Pharmacy. These amendments are adopted without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6611).

The amendments update the application requirements for Class A and Class C pharmacies to remove certain notarization requirements, and correct grammatical and punctuation errors.

No comments were received.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.6

The Texas State Board of Pharmacy adopts amendments to §315.6, concerning Pharmacy Responsibility - Electronic Reporting. These amendments are adopted without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6615).

The amendments require pharmacies to report the dispensing of prescriptions for controlled substances to the Texas Prescription Monitoring Program not later than the next business day, in accordance with §481.074(q) of the Texas Controlled Substances Act, and to correct previously submitted data within seven days of identifying errors or omissions.

The Board received comments from the Texas Dental Association in support of the amendments.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §315.15

The Texas State Board of Pharmacy adopts amendments to §315.15, concerning Access Requirements. These amendments are adopted with changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6616).

The amendments specify requirements for pharmacists to consult the Texas Prescription Monitoring Program (PMP) database to review a patient's controlled substance history before prescribing or dispensing an opioid, benzodiazepine, barbiturate, or carisoprodol as provided in §481.0764 and §481.0765 of the Texas Controlled Substances Act and clarify that PMP information may only be accessed as authorized in §481.076 of the Texas Controlled Substances Act.

The Board received comments from the Texas Medical Association (TMA) and the Texas Dental Association (TDA). TMA suggested that the Board remove certain language relating to practitioners that could be interpreted as an attempt to regulate individual practitioners and that certain clarifying language be added. The Board agreed and removed subsection (a), added clarifying language to subsections (c) and (d), and removed references to practitioners and delegates of practitioners from subsections (d) and (e). Subsequent relettering of the subsections eliminated subsection (e) altogether.

TMA also suggested that the Board remove language stating that unauthorized access to the PMP is a violation of the Texas Controlled Substances Act, the Texas Pharmacy Act, and board rules. The Board declines to remove this language because the Board believes it is important to reiterate that unauthorized access is a violation of law. TDA suggested that the rule be modified to delay mandatory PMP lookup for prescribers. The Board believes the removal of language relating to practitioners should alleviate TDA's concerns.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.15. Access Requirements.

(a) Effective September 1, 2019, a pharmacist before dispensing an opioid, benzodiazepine, barbiturate, or carisoprodol for a patient shall consult the Texas Prescription Monitoring Program (PMP) database to review the patient's controlled substance history.

(b) The duty to consult the PMP database as described in subsection (a) of this section does not apply in the following circumstances:

(1) the prescribing individual practitioner is a veterinarian;

(2) it is clearly noted in the prescription record that the patient has a diagnosis of cancer or is in hospice care; or

(3) the pharmacist is unable to access the PMP after making and documenting a good faith effort to do so.

(c) If a pharmacist uses pharmacy management systems that integrate data from the PMP, a review of the pharmacy management system with the integrated data shall be deemed compliant with the review of the PMP database as required under §481.0764(a) of the Texas Health and Safety Code and in subsection (a) of this section.

(d) Pharmacists and pharmacy technicians acting at the direction of a pharmacist may only access information contained in the PMP as authorized in §481.076 of Texas Controlled Substances Act. A person who is authorized to access the PMP may only do so utilizing that person's assigned identifier (i.e., login and password) and may not use the assigned identifier of another person. Unauthorized access of PMP information is a violation of Texas Controlled Substances Act, the Texas Pharmacy Act, and board 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.

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.76

The Texas State Board of Public Accountancy adopts an amendment to §501.76, concerning Records and Work Papers, without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6617). The rule text will not be republished.

The amendment to §501.76 makes it clear that if a licensee has records in a format that their client requests then the licensee should make those records available to the client. A licensee is not required to provide the client with proprietary information or intellectual property unless the licensee has reached an agreement in writing at the outset of the engagement to provide that information.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7842

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CHAPTER 505. THE BOARD

22 TAC §505.9

The Texas State Board of Public Accountancy adopts an amendment to §505.9, concerning Order of Business, with changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6619) to correct punctuation. The text will be republished.

The amendment to §505.9 eliminates the need to provide the Board with 20 days written notice prior to appearing and speaking at a Board meeting.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§505.9. Order of Business.

(a) The executive director, in conjunction with the presiding officer, shall prepare a written agenda for each board meeting and distribute a copy of the agenda to each board member.

(b) Any board member may place an item on the board's agenda by written request to the presiding officer at least 20 days before the next board meeting.

(c) Conduct of board meetings shall be guided by Robert's Rules of Order, except that no board action shall be invalidated by reason of failure to comply with those rules.

(d) Except for board enforcement actions, disciplinary actions and investigations, any person may request an appearance before the board for the purpose of making a presentation on a matter under the board's jurisdiction. The presiding officer may deny a request to appear based on time constraints or other reasons which, in the presiding officer's opinion, warrant such denial. When practicable, a specific date and time to appear shall be set by the presiding officer, and a time limit may also be imposed. The person requesting the appearance should state in writing in reasonable detail the request to be made of the board and the estimated time needed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 515. LICENSES

22 TAC §515.3

The Texas State Board of Public Accountancy adopts an amendment to §515.3, concerning License Renewals for Individuals and Firm Offices, without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6620). The amended rule will not be republished.

The amendment to §515.3 exempts military service members from any penalty or increased fee for failing to timely renew a license while serving as a military service member and an additional two years to complete any other board requirement for licensure when deployed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §515.5

The Texas State Board of Public Accountancy adopts an amendment to §515.5, concerning Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct, without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6621). The rule text will not be republished.

The amendment to §515.5 allows a military service member, the member's spouse, and military veterans to obtain a license in Texas when they have a license in another jurisdiction that has substantially equivalent requirements to Texas or if they had a license in this state anytime within the five years preceding the license application. It provides that the Executive Director may: 1) waive prerequisites to obtaining a license based upon the applicant's credentials, 2) consider other methods, not including the examination requirement, that demonstrate the applicant is qualified to be licensed in Texas, and 3) credit, other than the examination requirement, military service, training or education that is relevant toward the experience requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §515.11

The Texas State Board of Public Accountancy adopts new rule §515.11, concerning Licensing for Military Service Members, Military Veterans, and Military Spouses, without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6622). The rule text will not be republished.

New rule §515.11 allows a military service member and their spouse and military veterans to obtain a license in Texas when they have a license in another jurisdiction that has substantially equivalent requirements to Texas or if they had a license in this state anytime within the five years preceding the license application. Provides that the Executive Director may: 1) waive prerequisites to obtaining a license based upon the applicant's credentials, 2) consider other methods, not including the examination requirement, that demonstrate the applicant is qualified to be licensed in Texas, and 3) credit, other than the examination requirement, military service, training or education that is relevant toward the experience requirements.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 521. FEE SCHEDULE

22 TAC §521.3

The Texas State Board of Public Accountancy adopts an amendment to §521.3, concerning Fee for Certification by Reciprocity, without changes to the proposed text as published in the Octo-

ber 5, 2018, issue of the *Texas Register* (43 TexReg 6624). The amended rule text will not be republished.

The amendment to §521.3 exempts military service members, their spouses, and military veterans from the reciprocity fee required of persons licensed in another jurisdiction applying to be licensed in Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §521.7

The Texas State Board of Public Accountancy adopts an amendment to §521.7, concerning Fee for Transfer of Credits, without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6625). The rule text will not be republished.

The amendment to §521.7 exempts military service members and military veterans from the processing fee for the transfer of course credits earned in another licensing jurisdiction.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §521.9

The Texas State Board of Public Accountancy adopts an amendment to §521.9, concerning Certificate Fee, without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6626). The rule text will not be republished.

The amendment to §521.9 exempts military service members and military veterans from the fee for certification.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §521.12

The Texas State Board of Public Accountancy adopts an amendment to §521.12, concerning Filing Fee, without changes to the proposed text as published in the October 5, 2018 issue of the *Texas Register* (43 TexReg 6626). The rule will not be republished.

The amendment to §521.12 exempts military service members and military veterans from the initial filing of the application of intent fee and exempts military service members and their spouses and military veterans who hold a current license from a substantially equivalent jurisdiction from the initial filing fee.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §521.14

The Texas State Board of Public Accountancy adopts an amendment to §521.14, concerning Eligibility Fee, without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6627). The rule text will not be republished.

The amendment to §521.14 makes military service members and military veterans exempt from the eligibility fee required to take the CPA exam.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.113

The Texas State Board of Public Accountancy adopts an amendment to §523.113, concerning Exemptions from CPE, without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6629). The rule text will not be republished.

The amendment to §523.113 revises the rule to use the term "military service member" in order to be consistent with the term used in Chapter 55 of the Texas Occupations Code and the Board's rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

TRD-201804930
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 5, 2018
Proposal publication date: October 5, 2018
For further information, please call: (512) 305-7842

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES
SUBCHAPTER GG. MINIMUM RESERVE STANDARDS FOR INDIVIDUAL AND GROUP ACCIDENT AND HEALTH INSURANCE

28 TAC §3.7001

INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 TAC §3.7001, concerning the minimum reserve standards for individual and group accident and health insurance. Section 3.7001 implements Insurance Code §425.072. The amendments are adopted with changes to the proposed text as published in the June 15, 2018, issue of the *Texas Register* (43 TexReg 3864). Section 3.7001(a)(2) and (3) are changed to correct punctuation errors by adding two commas.

REASONED JUSTIFICATION. Amending §3.7001 is necessary for the following two reasons: (1) to comply with Insurance Code §425.072(a), which requires using the valuation manual for setting reserves on accident and health insurance policies issued on or after the operative date; and (2) to provide for the same claim reserve requirements on all new claims under accident and health insurance policies, regardless of the policy's issue date.

The valuation manual currently provides claim reserve requirements for accident and health insurance policies issued on and after the operative date of the valuation manual (operative date), which was January 1, 2017. Senate Bill 1654, 84th Legislature, Regular Session (2015), requires that insurers use the valuation manual for reserve requirements for policies issued on and after the operative date. It also provides that policies issued prior to the operative date use the reserve requirements "in existence prior to the operative date of the valuation manual in addition to any requirements established by the commissioner and adopted by rule." Amending the rule to align the claim reserve requirements for claims incurred after the operative date on policies issued prior to the operative date with those claim reserve requirements of the valuation manual will adopt the same claim reserve requirements, regardless of the issue date, which is consistent with the intent of SB 1654.

Section 3.7001 provides the scope and general standards for coverages in Subchapter GG, which addresses the minimum reserve standards for individual and group accident and health insurance. Minimum reserve standards are technical requirements, such as morbidity tables and appropriate assumptions, that are used by actuaries to determine the amount of claim reserves an insurer needs to hold. Amending §3.7001 is necessary to comply with Insurance Code §425.072 for policies issued after the operation date. The amendments are also necessary to provide for the same claim reserve requirements regardless of the issue date. The text of §3.7001 as proposed is changed by adding commas following "January 1, 2009," where it appears in §3.7001(a)(2) and (3).

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenter: TDI received one written comment from the American Council of Life Insurers in support of the proposal without changes.

General.

One commenter supports the direction of the proposed amendments.

Agency Response to Comment.

TDI appreciates the supportive comment.

STATUTORY AUTHORITY. TDI adopts the amendments to §3.7001 under Insurance Code §§425.072, 421.001, and 36.001.

Insurance Code §425.072 provides the minimum standard of valuation for disability, accident and sickness, and accident and health insurance contracts. The standard for contracts issued on or after the operative date is the valuation manual and the standard for contracts issued before the operative date is the standard in existence before the operative date in addition to any requirements established by the Commissioner and adopted by rule.

Insurance Code §421.001(a) and (b) require insurers to maintain reserves for losses or claims as well as the expenses to adjust or settle those losses or claims. Insurance Code §421.001(c) requires that the Commissioner shall adopt each current formula recommended by the National Association of Insurance Commissioners for establishing reserves for each line of insurance.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The adopted amendments to §3.7001 implement Insurance Code §425.072, enacted by SB 1654, 84th Legislature, Regular Session (2015).

§3.7001. Introduction.

(a) Scope and general standards.

(1) Pursuant to Insurance Code §425.072, all individual and group accident and health insurance coverages, including single premium credit accident and health insurance contracts, issued on and after January 1, 2017, are required to follow the standards and reserve requirements provided in the valuation manual adopted by the department pursuant to Insurance Code §425.073.

(2) In establishing claim reserves for all individual and group accident and health insurance coverages issued before January 1, 2017, and single premium credit accident and health insurance contracts issued on or after January 1, 2009, and before January 1, 2017, the provisions of this paragraph apply. An insurer may use applicable requirements in the valuation manual for claim reserves for valuations after December 31, 2016, and before January 1, 2019, and must use applicable requirements in the valuation manual for claim reserves for valuations after December 31, 2018.

(3) Unless paragraph (1) or (2) of this subsection applies, the standards in this subchapter apply to all individual and group accident and health insurance coverages issued before January 1, 2017, as well as single premium credit accident and health insurance contracts issued on or after January 1, 2009, and before January 1, 2017. All other credit insurance is not subject to the requirements provided by this paragraph.

(4) When an insurer determines that adequacy of its health insurance reserves requires reserves in excess of the minimum standards specified in this subchapter, such increased reserves must be held and must be considered the minimum reserves for that insurer.

(5) With respect to any block of contracts, or with respect to an insurer's health business as a whole, a prospective gross premium valuation is the ultimate test of reserve adequacy as of a given valuation date. Such a gross premium valuation would take into account, for contracts in force, in a claims status, or in a continuation of benefits status on the valuation date, the present value as of the valuation date of: all expected benefits unpaid, all expected expenses unpaid, and all unearned or expected premiums, adjusted for future premium increases reasonably expected to be put into effect.

(6) Such a gross premium valuation must be performed whenever a significant doubt exists as to reserve adequacy with respect to any major block of contracts, or with respect to the insurer's health business as a whole. In the event inadequacy is found to exist, immediate loss recognition must be made and the reserves restored to adequacy. Adequate reserves (inclusive of claim, premium, and contract reserves, if any) must be held with respect to all contracts, regardless of whether contract reserves are required for such contracts under the standards required under this subchapter.

(7) Whenever minimum reserves, as defined in this subchapter, exceed reserve requirements as determined by a prospective gross premium valuation, such minimum reserves remain the minimum requirement under these standards.

(b) Categories of reserves. The following sections set forth minimum standards for three categories of health insurance reserves: §3.7002 of this title (relating to Claim Reserves); §3.7003 of this title (relating to Premium Reserves); and §3.7004 of this title (relating to Contract Reserves). Adequacy of an insurer's health insurance reserves is to be determined on the basis of all three categories combined. However, the standards in these sections emphasize the importance of

determining appropriate reserves for each of the three categories separately.

(c) Sections 3.7006, 3.7007, 3.7008, and 3.7009. Section 3.7006 and §3.7007 of this title (relating to Specific Standards for Morbidity, Interest, and Mortality; and Glossary of Technical Terms Used) are an integral part of the standards specified in §§3.7001 - 3.7005 of this title (relating to Introduction; Claims Reserves; Premium Reserves; Contract Reserves and Reinsurance). Section 3.7008 of this title (relating to Reserves for Waiver of Premium) is supplementary and is not part of the standards as such, but is included for explanatory and illustrative purposes only. Section 3.7006 of this title contains specific minimum standards with respect to morbidity, interest, and mortality, which apply to claim reserves according to year of incurral and to contract reserves according to year of issue. Section 3.7007 of this title consists of a glossary of technical terms used. Section 3.7008 of this title is supplementary and deals with waiver of premium reserves. For the purchase of existing business under certain circumstances, see §3.7009 of this title (relating to Purchase or Assumption of Existing Business).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201804884
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: December 3, 2018
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For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.62

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §305.62 *without change* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4702). The amendments will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The commission adopts a federal rule update as well as responds to a petition filed by Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association (TMRA-UC) in October 2016 (Project Number 2017-005-PET-NR; approved on December 15, 2016, to initiate rulemaking). The rulemaking modifies rules in 30 TAC in order to fulfill the requirements of an Agreement State program for radioactive material licenses and also to clarify and streamline rules. The adopted revision in §305.62 changed the category for certain types of radioactive material license amendment applications dealing with reductions in financial assurance.

This rulemaking includes corresponding changes to 30 TAC Chapter 331, Underground Injection Control; and Chapter 336, Radioactive Substance Rules.

Section Discussion

§305.62, Amendments

Under current rule, any reduction in the amount of financial assurance for a radioactive materials license triggers as a major amendment application. This practice is not always consistent with other programs that require financial assurance. If a licensee completes required closure (such as decommissioning or groundwater restoration) and the agency has approved such closure, financial assurance for that closure is no longer needed and a major amendment application for the license should not be required to reduce the financial assurance. In some cases, approval of the licensee's closure activity may also require concurrence of the Nuclear Regulatory Commission (NRC). The commission adopts amended §305.62(i) so that a licensee would submit a minor amendment application for a reduction in financial assurance as a result of completed closure activities.

The commission adopts amended §305.62(i)(1)(J) to delete the word "amounts" and add the phrase "unless such a reduction occurs as a result of completed closure activities that have been approved by the appropriate regulatory authority." This amendment reduces regulatory costs and time requirements.

The commission adopts amended §305.62(i)(2)(B) to delete the word "or" as a result of adopted §305.62(i)(2)(C).

The commission adopts §305.62(i)(2)(C) to add the phrase "authorizes a reduction in financial assurance as a result of completed closure activities that have been approved by the appropriate regulatory authority; or". This amendment reduces regulatory costs and time requirements.

The commission adopts an amendment to reletter §305.62(i)(2)(D) resulting from adopted §305.62(i)(2)(C).

Final Regulatory Impact Determination

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the statute. A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking action is procedural and changes the category of certain radioactive materials license applications dealing with financial assurance. The adopted rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendment does not alter

in a material way the existing substantive requirements for radioactive material licensees.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission implements an Agreement State program under the federal Atomic Energy Act and must maintain a compatible program with the NRC. The adopted revision for the type of amendment application for certain reductions in financial assurance does not exceed a standard of federal law. There are no federal standards regarding amendment categories for a reduction in financial assurance resulting from completed closure activity. The adopted rule is compatible with federal law.

The adopted rule does not exceed a requirement of state law. Texas Health and Safety Code (THSC), Chapter 401, the Radiation Control Act, establishes requirements for the commission's radioactive materials licensing program. The Radiation Control Act does not address categories of license amendment applications dealing with reductions in financial assurance. The adopted rulemaking is consistent with THSC, Chapter 401.

The commission also determined that the adopted rule does not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The adopted revision for the type of amendment application for certain reductions in financial assurance does not exceed a requirement of a delegation agreement or the state's agreement with the NRC for maintaining a compatible licensing program.

The commission also determined that the rule is adopted under specific authority of the Texas Radiation Control Act, THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources or radiation, the licensing of source material recovery and disposal of radioactive materials.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of the adopted rule does not constitute a taking of real property.

Promulgation and enforcement of this adopted rule is neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the rules. The adopted rule is procedural and changes the category of certain radioactive materials license applications dealing with financial assurance.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission offered a public hearing on August 9, 2018. The comment period closed on August 13, 2018. The commission received one comment letter from Lloyd Gosselink on behalf of TMRA-UC in support of the rulemaking and suggesting changes to the rulemaking.

Response to Comments

Comment

TMRA-UC stated the revisions work to accomplish the goals of TMRA-UC's petition and agrees with TCEQ's proposed rule revisions.

Response

The commission appreciates the support for the rulemaking and proposed changes. No changes have been made in response to this comment.

Statutory Authority

The amendment is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401, THSC, §401.011,which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to the control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.109, which requires the commission to establish the type and amount of financial assurance by rule; THSC, §401.2625, which provides the commission authority to grant licenses for source material recovery and processing, and for the storage, processing or disposal of by-product material; and THSC, §401.412, which provides the commission authority to adopt rules for the recovery and processing of source material and the disposal of by-product material. The adopted amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the

authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

The amendment implements THSC, Chapter 401, including THSC, §§401.011, 401.051, 401.103, 401.104, 401.107, and 401.109.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §331.84 and §331.107 *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4707) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The commission adopts rulemaking to implement a federal rule update as well as respond to a petition filed by Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association (TMRA-UC) in October 2016 (Project Number 2017-005-PET-NR; approved on December 15, 2016 to initiate rulemaking). The rulemaking modifies rules in 30 TAC in order to fulfill the requirements of an Agreement State program for radioactive material licenses and also to clarify and streamline rules. The adopted rules in Chapter 331 address requirements for injection wells used for *in situ* uranium operations to improve the wording of the timing requirement for twice a month sampling; clarify that restoration has been completed when mean concentration values fall below the corresponding restoration table values; change the reporting requirements for restoration progress reports; and clarify the timing requirements for stability sampling and the submission of an amendment application for restoration table revision.

This rulemaking includes corresponding changes to 30 TAC Chapter 305, Consolidated Permits and Chapter 336, Radioactive Substance Rules.

Section by Section Discussion

§331.84, Monitoring Requirements

The commission adopts amended §331.84(c) to replace the word "a" with the words "each calendar," replace the phrase "For a given calendar month, the second" with the word "Every," and replace the phrase "15 days after the first sample is collected" with the phrase "between 10 and 20 days from when the previous sample was collected." These changes add clarity and streamline current fluid level water quality monitoring requirements to assure that the twice monthly sampling is spread out through a given month, but is not too proscriptive so that the permittee can adequately plan or adjust sampling activities.

§331.107, Restoration

The commission adopts amended §331.107(a)(2)(A) to replace the words "sample measurements" with the words "mean concentration values" and replace the word "measurements" with the words "mean concentration values." These changes add accuracy to restoration parameters for groundwater sampling. Restoration is established when the mean concentration values are below the restoration table values, not all sample measurements.

The commission adopts amended §331.107(d) to add the phrase "and until receiving written acknowledgment from the executive director that restoration for the production areas has been accomplished." This change adds clarity by aligning the language in subsection (d) with the current language in subsection (f). The executive director must acknowledge that groundwater restoration has been achieved before the permittee can commence closure activities.

The commission adopts amended §331.107(d)(1) to add the phrase "to monitor restoration progress for certain parameters, as approved by the executive director." This change clarifies the type of analytical data generated that is required for reports and includes those parameters that have been amended or those specifically required by the commission.

The commission adopts amended §331.107(d)(2) to add the phrase "or for each restoration parameter that has been amended in accordance with subsection (g) of this section." This change would add clarity by aligning the language in subsection (d)(2) with the amendment requirements in subsection (g), so that reporting requirements apply only to parameters that have been amended.

The commission adopts amended §331.107(f) to replace the word "certain" with the word "all" related to parameters listed in the restoration table, add the phrase "Stability sampling may commence 60 days after cessation of restoration operations," and correct the word "insure" to the word "ensure." These changes improve stability samples and restoration operations to better protect human health and the environment and to correct incorrect grammar.

The commission adopts amended §331.107(g) to change the procedures for the amendment of a restoration table or range table values. These changes improve the clarity of the procedures by removing confusing language and aligning subsection (g) with subsection (f). Under the current rule language, it is impossible to comply with the specified timing requirement for the submission of a restoration table amendment application if that application must include all of the stability sampling information as part of the application.

The commission adopts amended §331.107(g)(3) to change the procedures for the amendment of a restoration table. These changes add additional clarity of the procedures by further explaining the requirements for stability sampling. Stability must be demonstrated when a permittee is seeking a restoration table amendment to increase a restoration table value to show that the particular parameter has stabilized. If the restoration table has

been amended, stability sampling must be repeated to show that the revised parameter has stabilized for a two-year period.

Final Regulatory Impact Determination

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the statute. A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking action implements clarifying changes for the timing of groundwater sampling activities, reporting requirements, and the timing of amendment applications and stability demonstrations for area permits and production area authorizations for *in situ* recovery of uranium. The adopted rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendments do not alter in a material way the existing requirements for injection wells used for *in situ* recovery of uranium.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission's Underground Injection Control (UIC) program is authorized by the United States Environmental Protection Agency (EPA) and the adopted changes for injection well permits and production area authorizations, do not exceed a standard of federal law or requirement of a delegation agreement. There are no federal standards for production area authorizations. The adopted rules are compatible with federal law.

The adopted rules do not exceed a requirement of state law. Texas Water Code (TWC), Chapter 27, the Injection Well Act, establishes requirements for the commission's UIC program. TWC, §27.0513 requires the commission to establish application requirements, technical requirements, including the methods for determining restoration table values and procedural requirements for a production area authorization. The adopted rulemaking is consistent with TWC, Chapter 27.

The adopted rules are compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The commission's UIC program is authorized by the EPA, and the adopted rules are compatible with the state's delegation of the UIC program.

The adopted rules are adopted under specific laws. TWC, Chapter 27, establishes requirements for the commission's UIC program and TWC, §27.019, requires the commission to adopt rules reasonably required to implement the Injection Well Act, and TWC, §27.0513 authorizes the commission to adopt rules to establish requirements for production area authorizations.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these adopted rules would not constitute a taking of real property.

The purpose of these adopted rules is to implement clarifying changes for the timing of groundwater sampling activities, reporting requirements, and the timing of amendment applications and stability demonstrations for area permits and production area authorizations for *in situ* recovery of uranium. The adopted rules in Chapter 331 do not substantially change the requirements for proper operation or closure of injection wells or the requirement for groundwater restoration following *in situ* mining operations.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The adopted rules for injection well permits and production area authorizations do not affect real property. The adopted rules apply only to those who use or apply for permit or authorization of injection wells for *in situ* recovery of uranium. The adopted rules make clarifying changes to the timing of groundwater sampling activities, reporting requirements, and the timing of amendment applications and stability demonstrations for area permits and production area authorizations for *in situ* recovery of uranium.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission offered a public hearing on August 9, 2018. The comment period closed on August 13, 2018. The commission received one comment letter from Lloyd Gosselink on behalf of TMRA-UC in support of the rulemaking and suggested changes to the rulemaking.

Response to Comments

30 TAC §331.84, Monitoring Requirements

Comment

TMRA-UC stated the revisions work to accomplish the goals of TMRA-UC's petition and agrees with TCEQ's proposed rule revisions.

Response

The commission appreciates the support for the rulemaking and proposed changes. No changes have been made in response to this comment.

30 TAC §331.105, Monitoring Standards

Comment

TMRA-UC commented that §331.105(3) should be revised as requested in the original rulemaking petition, dated October 28, 2016. TMRA-UC suggested changes regarding monitoring standards and excursions related to uranium mining operations.

Response

The requirement in §331.105(3) triggers the requirements for the permittee to conduct further verifying analysis. Regarding the requested change to §331.105, the commission responds that the current rules provide sufficient flexibility to allow for the selection of appropriate parameters for excursion monitoring as well as for allowing the permittee to demonstrate that the change in water quality is not due to the presence of mining solutions or fluids from mining activities. No changes have been made in response to this comment.

30 TAC §331.107, Restoration

Comment

TMRA-UC believes the proposed revisions accomplish TMRA-UC's goal of improving the restoration sampling process.

Response

The commission appreciates the support for the rulemaking and proposed changes. No changes have been made in response to this comment.

SUBCHAPTER E. STANDARDS FOR CLASS III WELLS

30 TAC §331.84

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and TWC, §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The adopted amendment implements TWC, §27.0513.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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SUBCHAPTER F. STANDARDS FOR CLASS III WELL PRODUCTION AREA DEVELOPMENT

30 TAC §331.107

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also adopted under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and TWC, §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

The adopted amendment implements TWC, §27.0513.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER L. LICENSING OF SOURCE MATERIAL RECOVERY AND BY-PRODUCT MATERIAL DISPOSAL FACILITIES

30 TAC §336.1115

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts an amendment to §336.1115 *without changes* to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4712). The rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The commission adopts rulemaking to implement a federal rule update as well as respond to a petition filed by Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association (TMRA-UC) in October 2016 (Project Number 2017-005-PET-NR; approved on December 15, 2016, to initiate rulemaking). The rulemaking modifies rules in 30 TAC in order to fulfill the requirements of an Agreement State program for radioactive material licenses and also to clarify and streamline rules. The adopted change to §336.1115 corrects a citation in the rule.

This rulemaking includes corresponding changes to 30 TAC Chapter 305, Consolidated Permits and 30 TAC Chapter 331, Underground Injection Control.

Section Discussion

§336.1115, Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas

The commission adopts amended §336.1115(d)(2) to correct a reference to the citation for the definition of the term "Principal activities." "Principal activities" is defined in §336.1105(30).

Final Regulatory Impact Determination

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the statute. A "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking action is clerical and corrects a citation to the defined term "principal activities." The adopted rulemaking is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendment does not alter in a material way the existing substantive requirements for radioactive material licensees.

Furthermore, the adopted rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

The commission implements an Agreement State program under the federal Atomic Energy Act and must maintain a compatible program with the United States Nuclear Regulatory Commission (NRC). The adopted revision to correct a rule citation does not exceed a standard of federal law. The adopted rule is compatible with federal law.

The adopted rule does not exceed a requirement of state law. Texas Health and Safety Code (THSC), Chapter 401, the Radiation Control Act, establishes requirements for the commission's radioactive materials licensing program. The adopted rulemaking is consistent with THSC, Chapter 401.

The commission also determined that the adopted rule does not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The adopted revision to correct a rule citation does not exceed a requirement of a delegation agreement or the state's agreement with the NRC for maintaining a compatible licensing program.

The commission also determined that the rule is adopted under specific authority of the Texas Radiation Control Act, THSC, Chapter 401. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources or radiation, the licensing of source material recovery and disposal of radioactive materials.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of the adopted rule does not constitute a taking of real property.

Promulgation and enforcement of the adopted rule is neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the rule. The adopted rule is clerical and corrects the citation to the defined term "principal activities."

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission offered a public hearing on August 9, 2018. The comment period closed on August 13, 2018. The commission received one comment letter from Lloyd Gosselink on behalf of TMRA-UC in support of the rulemaking and suggesting changes to the rulemaking.

Response to Comments

30 TAC §336.109, Fees after Request for Termination of License

Comment

TMRA-UC commented that §336.109 should be amended so that licensees are not subject to the fee requirement of §336.109 after restoration is completed and while awaiting NRC approval.

Response

Regarding the requested change to §336.109, the commission responds that the determination by the commission that restoration has been completed for a site requires confirmation of that finding by the NRC. Agency expenses may be incurred in reviewing licensee reports, conducting site confirmatory surveys, developing reports to send to NRC, and responding to NRC requests. It would be premature to suspend annual fees while this additional work is conducted. No changes have been made in response to this comment.

30 TAC §336.208, Radiation Safety Officer

Comment

TMRA-UC suggested changes to §336.208 as requested in the rulemaking petition, to revise training requirements for radiation safety officers so that previous professional experience may satisfy this rule requirement.

Response

The requested change to §336.208 regarding training requirements for radiation safety officers in the petition is not compatible with NRC requirements. No changes have been made in response to this comment.

Statutory Authority

The amendment is adopted under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), Chapter 401; THSC, §401.011,which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.2625, which provides the commission authority to grant licenses for source material recovery and processing, and for the storage, processing or disposal of by-product material; and THSC, §401.412, which provides the commission authority to adopt rules for the recovery and processing of source material and the disposal of by-product material. The adopted amendment is also authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the water code and other laws of the state.

The adopted amendment implements THSC, Chapter 401, including THSC, §§401.011, 401.051, 401.103, 401.104, 401.107, and 401.265.

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-201804945
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 6, 2018
Proposal publication date: July 13, 2018
For further information, please call: (512) 239-2613

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER P. ENTERPRISE RESOURCE PLANNING

34 TAC §5.301

The Comptroller of Public Accounts adopts the repeal of §5.301, concerning enterprise resource planning advisory council, without changes to the proposed text as published in the October 5, 2018, issue of the *Texas Register* (43 TexReg 6635).

In 2007, the legislature added Government Code, §2101.040, which requires the comptroller to establish the Council. This statute also provides that Government Code, Chapter 2110, regarding advisory committees, applies to the Council. Government Code, §2110.008(a), allows a state agency to designate by rule "the date on which an advisory committee will automatically be abolished." Pursuant to Government Code, §2101.040 and §2110.008, the comptroller adopted §5.301, which established the Council and made the Council subject to abolishment "on the fourth anniversary of its first meeting unless the comptroller acts to continue its existence." Because more than four years have elapsed since the Council's first meeting in 2008 and the comptroller has not acted to continue the Council's existence, the Council has been abolished. Therefore, §5.301 is no longer needed.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Government Code, Chapter 2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee, and describe the manner in which the committee will report to the agency.

This repeal implements Enterprise Resource Planning Advisory Council, §2101.040.

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 14, 2018.

TRD-201804886

Victoria North
Chief Counsel, Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts
Effective date: December 4, 2018
Proposal publication date: October 5, 2018
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 811. CHOICES

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 811, relating to the Choices program, without changes, as published in the July 20, 2018, issue of the *Texas Register* (43 TexReg 4827). The rules will not be republished.

Subchapter A. General Provisions, §§811.1 - 811.4

Subchapter B. Choices Services Responsibilities, §811.11 and §811.14

Subchapter C. Choices Services, §811.21 and §811.22

Subchapter D. Choices Activities, §811.51

Subchapter E. Support Services and Other Initiatives, §811.61 and §811.65

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 811 rule changes is to reflect the changes made to TWC Chapter 809 Child Care Services rules, and other administrative changes as they relate to the Choices program, TWC's work-first employment and training program for Texans receiving Temporary Assistance for Needy Families (TANF).

On November 19, 2014, the Child Care and Development Block Grant (CCDBG) Act of 2014 was reauthorized for the first time since 1996. The US Department of Health and Human Services Administration for Children and Families initiated its rulemaking process December 24, 2015, to amend Child Care and Development Fund (CCDF) regulations based on the changes to the CCDBG Act. The reauthorization and subsequent rules made significant changes to the CCDF program.

Amendments to TWC's Chapter 809 rules implementing the CCDBG Act changes became effective October 1, 2016. However, the amendments to the rules also affect other programs in which child care services are offered, including Choices. The changes made to Chapter 809 require child care to be continued for:

--at least three months for Choices participants who fail to meet program requirements; or

--the remainder of the initial 12-month eligibility period if the individual resumes cooperation with Choices or begins participation in work, job training, or an education program during the three-month continuation period.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§811.1. Purpose and Goal

Section 811.1(b) is amended to replace the outdated term "Choices eligible" with the term "Choices-eligible individual."

§811.2. Definitions

Section 811.2(2), §811.2(3)(A), §811.2(3)(B), and §811.2(25) are amended to replace the outdated term "Choices eligible" with the term "Choices-eligible individual."

§811.3. Choices Service Strategy

Section 811.3(a)(3), §811.3(b)(2)(D), §811.3(b)(2)(D)(i), §811.3(B)(2)(D)(ii), and §811.3(B)(6) are amended to replace the outdated term "Choices eligibles" with the term "Choices-eligible individuals."

§811.4. Policies, Memoranda of Understanding, and Procedures

Section 811.4(c)(1), and §811.4(d)(5) are amended to replace the outdated term "Choices eligible" with the term "Choices-eligible individual."

Section 811.4(c)(2) is removed. This section requires Local Workforce Development Boards (Boards) to establish a local-level memorandum of understanding (MOU) in cooperation with the Texas Health and Human Services Commission (HHSC) for coordinated case management that is consistent with the MOU between HHSC and TWC. However, subsequent reviews of state and federal rules and regulations determined that this MOU is no longer necessary to support program operations.

Section 811.4(c)(3) is renumbered as §811.4(c)(2) and amended to replace the Texas Department of State Health Services (DSHS) with HHSC as the agency with which an MOU must be in place for providing mental health and substance abuse services to Choices participants. DSHS consolidated with its parent organization, HHSC, in 2016. This update reflects the current structure of the program in which HHSC is the agency responsible for mental health and substance abuse services.

Section 811.4(c)(4) is renumbered as §811.4(c)(3).

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

TWC adopts the following amendments to Subchapter B:

§811.11. Board Responsibilities

Section 811.11(a)(2)(E), §811.11(e), §811.11(g)(1)(A), §811.11(g)(2), and §811.11(i) are amended to replace the outdated term "Choices eligibles" with the term "Choices-eligible individuals."

§811.14. Noncooperation

Section 811.14(b)(2) adds language stating that TWC-funded child care is not a service that must be terminated for noncooperation by exempt Choices participants. Section 811.14(b)(3) adds that child care must be provided in accordance with §809.45 of this title.

SUBCHAPTER C. CHOICES SERVICES

TWC adopts the following amendments to Subchapter C:

§811.21. General Provisions

Section 811.21(a) is amended to replace the outdated term "Choices eligibles" with the term "Choices-eligible individuals."

§811.22. Assessment

Section 811.22(c) is amended to replace the outdated term "Choices eligibles" with the term "Choices-eligible individuals."

SUBCHAPTER D. CHOICES ACTIVITIES

TWC adopts the following amendments to Subchapter D:

§811.51. Post Employment Services

Section 811.51(c) and §811.51(e)(6) are amended to replace the outdated term "Choices eligible" with the term "Choices-eligible individual."

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

TWC adopts the following amendments to Subchapter E:

§811.61. Support Services

Section 811.61(b) adds language that stipulates that child care is an exception to this rule, which requires Boards to ensure that support services are only provided to Choices participants who are meeting Choices program requirements. This limitation does not apply to child care. The references to Choices program requirements are also updated from §811.16 to §811.13, which is the correct location of the program requirements, and outdated references to §809.45 of this title are removed.

Section 811.61(c)(1) adds language excepting TWC-funded child care from the support services that Boards must terminate immediately upon a determination of a Choices participant's failure to meet program requirements. The current language in §811.61(c)(2) is removed and replaced with language stating that child care must be provided in accordance with §809.45, as amended in accordance with the CCDBG Act. Section 811.61(c)(3) is no longer applicable and is removed.

§811.65. Wheels to Work

Section 811.65(a) and §811.65(b) are amended to replace the outdated term "Choices eligibles" with the term "Choices-eligible individuals."

No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§811.1 - 811.4

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4, and Texas Human Resources Code, Chapters 31 and 34.

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 13, 2018.

TRD-201804867
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 3, 2018
Proposal publication date: July 20, 2018
For further information, please call: (512) 689-9855

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SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

40 TAC §811.11, §811.14

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4, and Texas Human Resources Code, Chapters 31 and 34.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jason Vaden
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Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §811.21, §811.22

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4, and Texas Human Resources Code, Chapters 31 and 34.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
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For further information, please call: (512) 689-9855

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SUBCHAPTER D. CHOICES ACTIVITIES

40 TAC §811.51

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Texas Labor Code, Title 4, and Texas Human Resources Code, Chapters 31 and 34.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Workforce Commission
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SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §811.61, §811.65

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4, and Texas Human Resources Code, Chapters 31 and 34.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
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Proposal publication date: July 20, 2018
For further information, please call: (512) 689-9855

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CHAPTER 847. PROJECT RIO EMPLOYMENT ACTIVITIES AND SUPPORT SERVICES

The Texas Workforce Commission (TWC) adopts the repeal of Chapter 847 in its entirety, relating to Project RIO Employment Activities and Support Services, without changes, as published in the July 20, 2018, issue of the *Texas Register* (43 TexReg 4835):

Subchapter A. General Provisions, §§847.1 - 847.3

Subchapter B. Project RIO Job Seeker Responsibilities, §847.11 and §847.12

Subchapter C. Project RIO Services, §847.21 and §847.22

Subchapter D. Project RIO Employment Activities, §847.31

Subchapter E. Project RIO Support Services, §847.41

Subchapter F. Expenditure of Funds, §847.51

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the chapter repeal is to remove Chapter 847, Project RIO Employment Activities and Support Services, from the Texas Administrative Code.

The General Appropriations Act, 82nd Legislature, Regular Session (2011), eliminated funding for Project RIO, effective September 1, 2011, and has not funded the program since that date. Although specific funding for the Project RIO program was eliminated, the goal of serving ex-offenders continues to be an ongoing responsibility for Local Workforce Development Boards (Boards) providing services to customers under the Workforce Innovation and Opportunity Act (WIOA).

On January 30, 2018, the TWC three-member Commission approved the four-year rule review of Chapter 847, indicating that the Project RIO Employment Activities and Support Services rules are no longer needed. However, Boards will continue their ongoing efforts to serve ex-offenders through other program activities and services, as appropriate.

No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§847.1 - 847.3

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeals affect Texas Labor Code, particularly Chapters 301, 302, and 306; Texas Education Code, Chapter 19; and Texas Government Code, Chapter 552.

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 13, 2018.

TRD-201804873
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 3, 2018
Proposal publication date: July 20, 2018
For further information, please call: (512) 689-9855

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SUBCHAPTER B. PROJECT RIO JOB SEEKER RESPONSIBILITIES

40 TAC §847.11, §847.12

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeals affect Texas Labor Code, particularly Chapters 301, 302, and 306; Texas Education Code, Chapter 19; and Texas Government Code, Chapter 552.

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 13, 2018.

TRD-201804875
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 3, 2018
Proposal publication date: July 20, 2018
For further information, please call: (512) 689-9855

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SUBCHAPTER C. PROJECT RIO SERVICES

40 TAC §847.21, §847.22

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeals affect Texas Labor Code, particularly Chapters 301, 302, and 306; Texas Education Code, Chapter 19; and Texas Government Code, Chapter 552.

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 13, 2018.

TRD-201804877
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 3, 2018
Proposal publication date: July 20, 2018
For further information, please call: (512) 689-9855

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SUBCHAPTER D. PROJECT RIO EMPLOYMENT ACTIVITIES

40 TAC §847.31

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal affects Texas Labor Code, particularly Chapters 301, 302, and 306; Texas Education Code, Chapter 19; and Texas Government Code, Chapter 552.

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 13, 2018.

TRD-201804878
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 3, 2018
Proposal publication date: July 20, 2018
For further information, please call: (512) 689-9855

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SUBCHAPTER E. PROJECT RIO SUPPORT SERVICES

40 TAC §847.41

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal affects Texas Labor Code, particularly Chapters 301, 302, and 306; Texas Education Code, Chapter 19; and Texas Government Code, Chapter 552.

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 13, 2018.

TRD-201804879
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 3, 2018
Proposal publication date: July 20, 2018
For further information, please call: (512) 689-9855

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SUBCHAPTER F. EXPENDITURE OF FUNDS

40 TAC §847.51

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal affects Texas Labor Code, particularly Chapters 301, 302, and 306; Texas Education Code, Chapter 19; and Texas Government Code, Chapter 552.

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 13, 2018.

TRD-201804880
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: December 3, 2018
Proposal publication date: July 20, 2018
For further information, please call: (512) 689-9855

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER O. COUNTY TRANSPORTATION INFRASTRUCTURE FUND GRANT PROGRAM

43 TAC §§15.182, 15.188, 15.192

The Texas Department of Transportation (department) adopts amendments to §§15.182, 15.188, and 15.192, concerning the County Transportation Infrastructure Fund Grant Program. The amendments to §§15.182, 15.188, and 15.192 are adopted without changes to the proposed text as published in the September 14, 2018, issue of the *Texas Register* (43 TexReg 5941) and will not be republished.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 1305, 85th Legislature, Regular Session, 2017 (SB 1305), amended the Transportation Code by repealing the statute that allows the creation of County Energy Transportation Reinvestment Zones (CERTZ), and implementing corresponding changes to the County Transportation Infrastructure Fund Grant Program.

Amendments to §15.182, Eligibility, delete reference to a county transportation reinvestment zone and advisory board to be in conformance with Chapter 256 of the Transportation Code as amended by SB 1305.

Amendments to §15.188, Application Procedure, delete reference to a county transportation reinvestment zone and advisory board to be in conformance with Chapter 256 of the Transportation Code as amended by SB 1305.

Amendments to §15.192, Payment of Money, delete reference to a county transportation reinvestment zone to be in conformance with Chapter 256 of the Transportation Code as amended by SB 1305.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §256.103, which authorizes the commission to adopt rules to administer the County Transportation Infrastructure Fund Grant Program.

CROSS REFERENCE TO STATUTES

Transportation Code, Chapter 256.

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 15, 2018.

TRD-201804917
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: December 5, 2018
Proposal publication date: September 14, 2018
For further information, please call: (512) 463-8630

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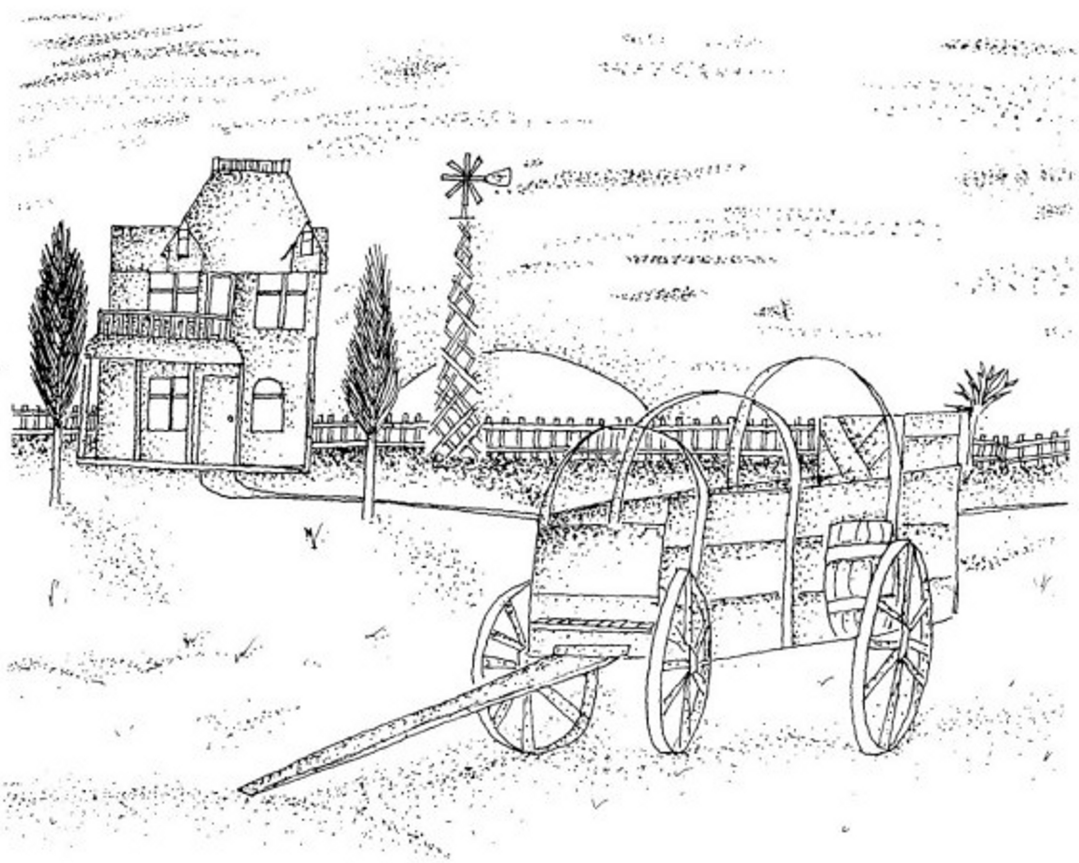


REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Texas Administrative Code, Chapter 255, *Finance.* This review is conducted in accordance with Government Code §2001.039.

CSEC has conducted a preliminary review of Chapter 255 and determined that the reasons for initially adopting the chapter continue to exist.

All comments or questions regarding this review may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, at The Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov. Any proposed changes to Chapter 255 will be published for comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register.*

Chapter 255 - Finance

§255.1 Regional Planning Commission 9-1-1 Emergency Service Fee and State Equalization Surcharge

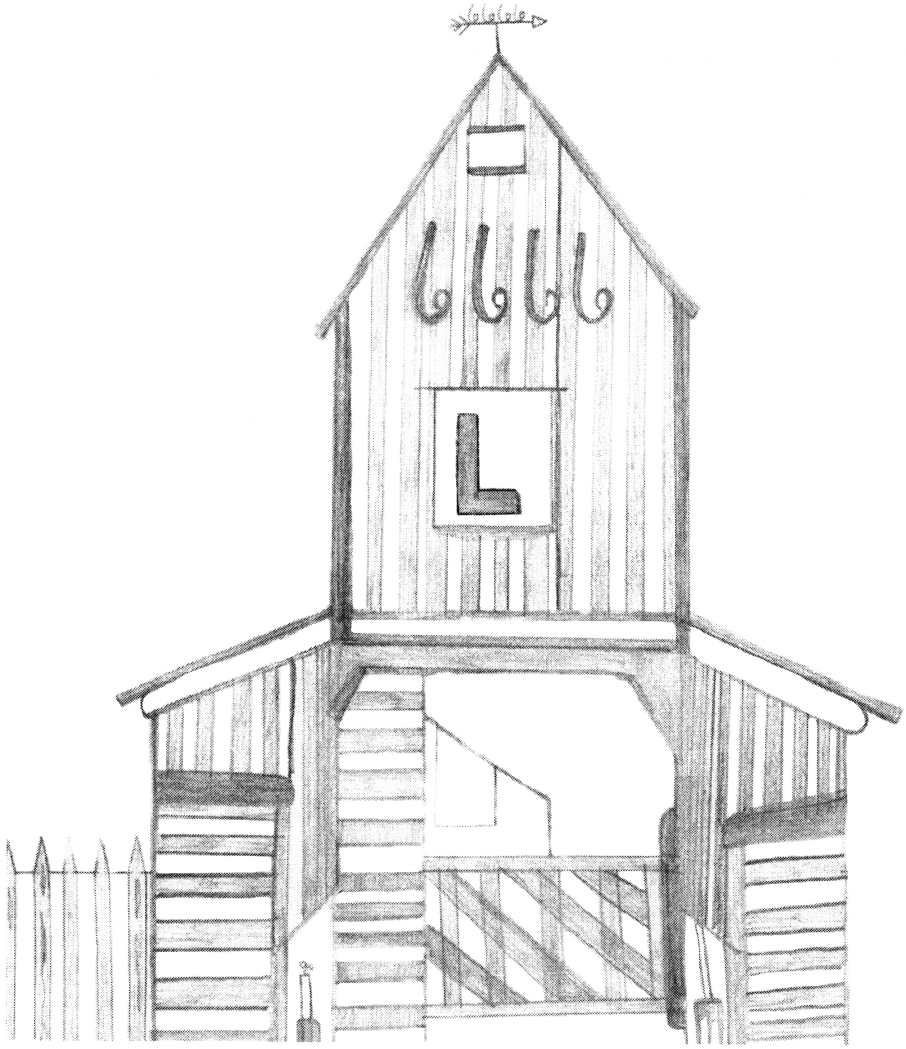
§255.2 9-1-1 Service Fee and Surcharge Collection and Remittance

§255.3 Emergency Communication District Equalization Surcharge Funding Policy

§255.4 Definition of a Local Exchange Access Line or an Equivalent Local Exchange Access Line

TRD-201804908
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: November 15, 2018

♦ ♦ ♦



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.

State Bar of Texas

Lawyer Advertising Proposed Rule Changes

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

VII. INFORMATION ABOUT LEGAL SERVICES

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rules. The committee will accept comments concerning the proposed rules through March 1, 2019. Comments can be submitted at texasbar.com/CDRR. A public hearing on the proposed rules will be held on January 9, 2019, at 10:30 a.m. at the Texas Law Center.

Proposed Rules (Redline Version)

Rule 7.01 ~~Firm Names and Letterhead~~ Communications Concerning a Lawyer's Services

(a) A lawyer ~~in private practice shall not practice under a trade name, a name that is misleading as to the identity of the lawyer or lawyers practicing under such name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that the names of a professional corporation, professional association, limited liability partnership, or professional limited liability company may contain "P.C.," "L.L.P.," "P.L.L.C.," or similar symbols indicating the nature of the organization, and if otherwise lawful a firm may use as, or continue to include in, its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Nothing herein shall prohibit a married woman from practicing under her maiden name~~ shall not make or sponsor a false or misleading communication about the qualifications or services of any lawyer or law firm. Information about legal services must be truthful and non-deceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve. This Rule governs all communications about a lawyer's services, including, but not limited to, advertisements and solicitation communications.

(b) ~~A firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~ A lawyer may practice law under a non-misleading trade name, including a trade name that includes the name of one or more deceased or retired members of the firm, or of a predecessor firm if there has been a succession in the firm's identity. A trade name may not imply a connection with a public or charitable legal services organization or a governmental entity, or utilize the name of a non-lawyer or a lawyer not associated with the firm. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) ~~The name of a lawyer occupying a judicial, legislative, or public executive or administrative position shall not be used in the name of a firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.~~ Any statement or disclaimer required by these rules shall be made in each language used in the communication. However, the mere statement that a language is spoken or understood does not by itself require a statement or disclaimer in that language.

(d) A lawyer shall not ~~hold himself or herself out as being a partner, shareholder, or associate with one or more other lawyers unless they are in fact partners, shareholders, or associates.~~ state or imply that the lawyer can achieve results by means that violate these Rules or other law.

(e) ~~A lawyer shall not advertise in the public media or seek professional employment by any communication under a trade or fictitious name, except that a lawyer who practices under a firm name as authorized by paragraph (a) of this Rule may use that name in such advertisement or communication but only if that name is the firm name that appears on the lawyer's letterhead, business cards, office sign, fee contracts, and with the lawyer's signature on pleadings and other legal documents.~~ Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

~~(f) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.02(a).~~

Rule 7.02 Communications ~~Concerning a Lawyer's Services~~ Disseminated by Public Media

(a) A lawyer ~~shall not make or sponsor a false or misleading communication about the qualifications or the services of any lawyer or firm. A communication is false or misleading if it:~~ who advertises in public media shall publish or broadcast the name of at least one lawyer who is responsible for the content of the advertisement and disclose the lawyer's primary practice location.

~~(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;~~

~~(2) contains any reference in a public media advertisement to past successes or results obtained unless~~

~~(i) the communicating lawyer or member of the law firm served as lead counsel in the matter giving rise to the recovery, or was primarily responsible for the settlement or verdict.~~

~~(ii) the amount involved was actually received by the client,~~

(iii) the reference is accompanied by adequate information regarding the nature of the case or matter, and the damages or injuries sustained by the client, and

(iv) if the gross amount received is stated, the attorney's fees and litigation expenses withheld from the amount are stated as well;

(3) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law;

(4) compares the lawyer's services with other lawyers' services, unless the comparison can be substantiated by reference to verifiable, objective data;

(5) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;

(6) designates one or more specific areas of practice in an advertisement in the public media or in a solicitation communication unless the advertising or soliciting lawyer is competent to handle legal matters in each such area of practice; or

(7) uses an actor or model to portray a client of the lawyer or law firm.

(b) Rule 7.02(a)(6) does not require that a lawyer be certified A lawyer who advertises in public media may include a statement that the lawyer has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization. at the time of advertising in a specific area of practice, but such certification shall conclusively establish that such lawyer satisfies the requirements of Rule 7.02(a)(6) with respect to the area(s) of practice in which such lawyer is certified. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(c) A lawyer shall not advertise in the public media or state in a solicitation communication that the lawyer is a specialist except as permitted under Rule 7.04. If an advertisement by a lawyer discloses willingness, or potential willingness, to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as costs of litigation.

(d) Any statement or disclaimer required by these rules shall be made in each language used in the advertisement or solicitation communication with respect to which such required statement or disclaimer relates; provided however, the mere statement that a particular language is spoken or understood shall not alone result in the need for a statement or disclaimer in that language. A lawyer who advertises in public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so.

Rule 7.03 Prohibited Solicitations and Payments Solicitation of Paid Professional Employment

(a) A lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f) seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. Notwithstanding the provisions of this paragraph, a lawyer for a qualified nonprofit organization may communicate with the organization's members for the purpose of educating the members to understand the law, to recognize legal problems, to make intelligent selection of counsel, or to use legal services. In those situations where in-person or telephone or other electronic contact is permitted by this paragraph, a lawyer shall not have such a contact with a prospective client if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;

(2) the communication contains information prohibited by Rule 7.02(a); or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(a) The following definitions apply to this rule:

(1) "Regulated telephone, social media, or other electronic contact" means any telephone, social media, or electronic communication initiated by a lawyer, or by any person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.

(2) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, except that a lawyer may pay reasonable fees for advertising and public relations services rendered in accordance with this Rule and may pay the usual charges of a lawyer referral service that meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(b) A lawyer shall not, for pecuniary gain, solicit through in-person contact, or through regulated telephone, social media, or electronic communication, professional employment from a non-client who has not sought the lawyer's advice or employment, unless the target of the solicitation is:

(1) a lawyer,

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer, or

(3) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(c) A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other person; provided however, this provision does not prohibit the payment of legitimate referral fees as permitted by Rule 1.04(f) or by paragraph (b) of this Rule. shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a written, audio, audiovisual, digital media, recorded telephone message, or other electronic communication to a prospective client, if:

(1) the communication involves coercion, duress, overreaching, intimidation, or undue influence;

(2) the communication is designed to resemble legal pleadings or other legal documents; or

(3) the communication is not plainly marked or clearly designated an "ADVERTISEMENT", unless the target of the solicitation is:

(i) a lawyer

(ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer, or

(iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(d) A lawyer shall not ~~enter into an agreement for, charge for, or collect a fee for professional employment obtained in violation of Rule 7.03(a), (b), or (c).~~pay, give, or offer to pay or give, anything of value to a person not licensed to practice law for soliciting or referring prospective clients for paid professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services. This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Occupations Code Title 5, Subtitle B, Chapter 952.

(e) Except as otherwise permitted, ~~A~~ a lawyer shall not ~~participate with or accept referrals from a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.~~ for the purpose of securing professional employment, pay, give, or advance, or offer to pay, give, or advance, anything of value to a prospective client, other than actual litigation expenses or financial assistance expressly permitted by law.

~~(f) As used in paragraph (a), "regulated telephone or other electronic contact" means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.~~

(f) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 7.04 ~~Advertisements in the Public Media~~ Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

~~(a) A lawyer shall not advertise in the public media by stating that the lawyer is a specialist, except as permitted under Rule 7.04(b) or as follows:~~

~~(1) A lawyer admitted to practice before the United States Patent Office may use the designation "Patents," "Patent Attorney," or "Patent Lawyer," or any combination of those terms. A lawyer engaged in the trademark practice may use the designation "Trademark," "Trademark Attorney," or "Trademark Lawyer," or any combination of those terms. A lawyer engaged in patent and trademark practice may hold himself or herself out as specializing in "Intellectual Property Law," "Patent, Trademark, Copyright Law and Unfair Competition," or any of those terms.~~

~~(2) A lawyer may permit his or her name to be listed in lawyer referral service offices that meet the requirements of Occupational Code Title 5, Subtitle B, Chapter 952, according to the areas of law in which the lawyer will accept referrals.~~

~~(3) A lawyer available to practice in a particular area of law or legal service may distribute to other lawyers and publish in legal directories and legal newspapers (whether written or electronic) a listing or an announcement of such availability. The listing shall not contain a false or misleading representation of special competence or experience, but may contain the kind of information that traditionally has been included in such publications.~~

~~(b) A lawyer who advertises in the public media:~~

~~(1) shall publish or broadcast the name of at least one lawyer who is responsible for the content of such advertisement; and~~

~~(2) shall not include a statement that the lawyer has been certified or designated by an organization as possessing special competence or a statement that the lawyer is a member of an organization the name of which implies that its members possess special competence, except that:~~

~~(i) a lawyer who has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization in the area so advertised, may state with respect to each such area, "Board Certified, area of specialization -- Texas Board of Legal Specialization;" and~~

~~(ii) a lawyer who is a member of an organization the name of which implies that its members possess special competence, or who has been certified or designated by an organization as possessing special competence, may include a factually accurate statement of such membership or may include a factually accurate statement, "Certified area of specialization name of certifying organization," but such statements may be made only if that organization has been accredited by the Texas Board of Legal Specialization as a bona fide organization that admits to membership or grants certification only on the basis of objective, exacting, publicly available standards (including high standards of individual character, conduct, and reputation) that are reasonably relevant to the special training or special competence that is implied and that are in excess of the level of training and competence generally required for admission to the Bar; and~~

~~(3) shall, in the case of infomercial or comparable presentation, state that the presentation is an advertisement;~~

~~(i) both verbally and in writing at its outset, after any commercial interruption, and at its conclusion; and~~

~~(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.~~

~~(c) Separate and apart from any other statements, the statements referred to in paragraph (b) shall be displayed conspicuously, and in language easily understood by an ordinary consumer.~~

~~(d) Subject to the requirements of Rules 7.02 and 7.03 and of paragraphs (a), (b), and (c) of this Rule, a lawyer may, either directly or through a public relations or advertising representative, advertise services in the public media, such as (but not limited to) a telephone directory, legal directory, newspaper or other periodical, outdoor display, radio, television, the Internet, or electronic, or digital media.~~

~~(e) All advertisements in the public media for a lawyer or firm must be reviewed and approved in writing by the lawyer or a lawyer in the firm.~~

~~(f) A copy or recording of each advertisement in the public media and relevant approval referred to in paragraph (e), and a record of when and where the advertisement was used, shall be kept by the lawyer or firm for four years after its last dissemination.~~

~~(g) In advertisements in the public media, any person who portrays a lawyer whose services or whose firm's services are being advertised, or who narrates an advertisement as if he or she were such a lawyer, shall be one or more of the lawyers whose services are being advertised.~~

~~(h) If an advertisement in the public media by a lawyer or firm discloses the willingness or potential willingness of the lawyer or firm to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay all or any portion of the court costs and, if a client may be liable for other expenses, this fact must be disclosed. If specific percentage fees or fee ranges of contingent fee work are disclosed in such advertisement, it must also disclose whether the~~

percentage is computed before or after expenses are deducted from the recovery.

(i) A lawyer who advertises in the public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period; but in no instance is the lawyer bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication.

(j) A lawyer or firm who advertises in the public media must disclose the geographic location, by city or town, of the lawyer's or firm's principal office. A lawyer or firm shall not advertise the existence of any office other than the principal office unless:

(1) that other office is staffed by a lawyer at least three days a week; or

(2) the advertisement states:

(i) the days and times during which a lawyer will be present at that office; or

(ii) that meetings with lawyers will be by appointment only.

(k) A lawyer may not, directly or indirectly, pay all or a part of the cost of an advertisement in the public media for a lawyer not in the same firm unless such advertisement discloses the name and address of the financing lawyer, the relationship between the advertising lawyer and the financing lawyer, and whether the advertising lawyer is likely to refer cases received through the advertisement to the financing lawyer.

(l) If an advertising lawyer knows or should know at the time of an advertisement in the public media that a case or matter will likely be referred to another lawyer or firm, a statement of such fact shall be conspicuously included in such advertisement.

(m) No motto, slogan or jingle that is false or misleading may be used in any advertisement in the public media.

(n) A lawyer shall not include in any advertisement in the public media the lawyer's association with a lawyer referral service unless the lawyer knows or reasonably believes that the lawyer referral service meets the requirements of Occupational Code Title 5, Subtitle B, Chapter 952.

(o) A lawyer may not advertise in the public media as part of an advertising cooperative or venture of two or more lawyers not in the same firm unless each such advertisement:

(1) states that the advertisement is paid for by the cooperating lawyers;

(2) names each of the cooperating lawyers;

(3) sets forth conspicuously the special competency requirements required by Rule 7.04(b) of lawyers who advertise in the public media;

(4) does not state or imply that the lawyers participating in the advertising cooperative or venture possess professional superiority, are able to perform services in a superior manner, or possess special competence in any area of law advertised, except that the advertisement may contain the information permitted by Rule 7.04(b)(2); and

(5) does not otherwise violate the Texas Disciplinary Rules of Professional Conduct.

(p) Each lawyer who advertises in the public media as part of an advertising cooperative or venture shall be individually responsible for:

(1) ensuring that each advertisement does not violate this Rule; and

(2) complying with the filing requirements of Rule 7.07.

(q) If these rules require that specific qualifications, disclaimers or disclosures of information accompany communications concerning a lawyer's services, the required qualifications, disclaimers or disclosures must be presented in the same manner as the communication and with equal prominence.

(r) A lawyer who advertises on the Internet must display the statements and disclosures required by Rule 7.04.

(a) A lawyer shall file with the staff of the Advertising Review Committee of the State Bar of Texas, no later than the date of dissemination of an advertisement of legal services via public media, or the date of a solicitation communication sent by any means, including social media, for the purpose of obtaining professional employment:

(1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination;

(2) a completed lawyer advertising and solicitation communication application; and

(3) payment to the State Bar of Texas of a fee set by the Board of Directors.

(b) If requested by the staff of the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement or written, recorded, electronic, or digital solicitation communication.

Rule 7.05 Prohibited Written, Electronic, Or Digital Solicitations Communications Exempt from Filing Requirements

(a) A lawyer shall not send, deliver, or transmit or knowingly permit or knowingly cause another person to send, deliver, or transmit a written, audio, audio-visual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if:

(1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment;

(2) the communication contains information prohibited by Rule 7.02 or fails to satisfy each of the requirements of Rule 7.04(a) through (c), and (g) through (q) that would be applicable to the communication if it were an advertisement in the public media; or

(3) the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(b) Except as provided in paragraph (f) of this Rule, a written, electronic, or digital solicitation communication to prospective clients for the purpose of obtaining professional employment:

(1) shall, in the case of a non-electronically transmitted written communication, be plainly marked "ADVERTISEMENT" on its first page, and on the face of the envelope or other packaging used to transmit the communication. If the written communication is in the form of a self-mailing brochure or pamphlet, the word "ADVERTISEMENT" shall be:

(i) in a color that contrasts sharply with the background color; and

(ii) in a size of at least 3/8" vertically or three times the vertical height of the letters used in the body of such communication, whichever is larger

(2) shall, in the case of an electronic mail message, be plainly marked "ADVERTISEMENT" in the subject portion of the electronic mail and at the beginning of the message's text;

~~(3) shall not be made to resemble legal pleadings or other legal documents;~~

~~(4) shall not reveal on the envelope or other packaging or electronic mail subject line used to transmit the communication, or on the outside of a self-mailing brochure or pamphlet, the nature of the legal problem of the prospective client or non-client; and~~

~~(5) shall disclose how the lawyer obtained the information prompting the communication to solicit professional employment if such contact was prompted by a specific occurrence involving the recipient of the communication, or a family member of such person(s).~~

~~(c) Except as provided in paragraph (f) of this Rule, an audio, audio-visual, digital media, recorded telephone message, or other electronic communication sent to prospective clients for the purpose of obtaining professional employment:~~

~~(1) shall, in the case of any such communication delivered to the recipient by non-electronic means, plainly and conspicuously state in writing on the outside of any envelope or other packaging used to transmit the communication, that it is an "ADVERTISEMENT."~~

~~(2) shall not reveal on any such envelope or other packaging the nature of the legal problem of the prospective client or non-client;~~

~~(3) shall disclose, either in the communication itself or in accompanying transmittal message, how the lawyer obtained the information prompting such audio, audio-visual, digital media, recorded telephone message, or other electronic communication to solicit professional employment, if such contact was prompted by a specific occurrence involving the recipient of the communication or a family member of such person(s);~~

~~(4) shall, in the case of a recorded audio presentation or a recorded telephone message, plainly state that it is an advertisement prior to any other words being spoken and again at the presentation's or message's conclusion; and~~

~~(5) shall, in the case of an audio-visual or digital media presentation, plainly state that the presentation is an advertisement;~~

~~(i) both verbally and in writing at the outset of the presentation and again at its conclusion; and~~

~~(ii) in writing during any portion of the presentation that explains how to contact a lawyer or law firm.~~

~~(d) All written, audio, audio-visual, digital media, recorded telephone message, or other electronic communications made to a prospective client for the purpose of obtaining professional employment of a lawyer or law firm must be reviewed and either signed by or approved in writing by the lawyer or a lawyer in the firm.~~

~~(e) A copy of each written, audio, audio-visual, digital media, recorded telephone message, or other electronic solicitation communication, the relevant approval thereof, and a record of the date of each such communication; the name, address, telephone number, or electronic address to which each such communication was sent; and the means by which each such communication was sent shall be kept by the lawyer or firm for four years after its dissemination.~~

~~(f) The provisions of paragraphs (b) and (c) of this Rule do not apply to a written, audio, audiovisual, digital media, recorded telephone message, or other form, of electronic solicitation communication:~~

~~(1) directed to a family member or a person with whom the lawyer had or has an attorney client relationship;~~

~~(2) that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;~~

~~(3) if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or~~

~~(4) that is requested by the prospective client.~~

(a) The filing requirements of these rules do not extend to any of the following materials, provided those materials comply with Rule 7.01:

(1) an advertisement in public media that contains only part or all of the following information,

(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney," "lawyer," "law office," or "firm";

(ii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(iii) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(iv) the educational background of the lawyer or lawyers;

(v) technical and professional licenses granted by this state and other recognized licensing authorities;

(vi) foreign language abilities;

(vii) particular areas of law in which one or more lawyers are certified by the Texas Board of Legal Specialization;

(viii) identification of prepaid or group legal service plans in which the lawyer participates;

(ix) the acceptance or nonacceptance of credit cards;

(x) any fee for initial consultation and fee schedule;

(xi) in the case of a website, links to other websites;

(xii) sponsorship by the lawyer or firm of a charitable, civic, or community program or event, or sponsorship of a public service announcement;

(xiii) any disclosure or statement required by these rules; and

(xiv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in public media that:

(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and

(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted mailed only to:

(i) existing or former clients;

(ii) other lawyers or professionals; or

(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization.

Rule 7.06 Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

Rule 7.07 Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

(a) Except as provided in paragraphs (c) and (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the mailing or sending by any means, including electronic, of a written, audio, audio-visual, digital or other electronic solicitation communication:

(1) a copy of the written, audio, audio-visual, digital, or other electronic solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes or other packaging in which the communications are enclosed;

(2) a completed lawyer advertising and solicitation communication application form; and

(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas, no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:

(1) a copy of the advertisement in the form in which it appears or will appear upon dissemination, such as a videotape, audiotape, DVD, CD, a print copy, or a photograph of outdoor advertising;

(2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;

(3) a statement of when and where the advertisement has been, is, or will be used;

(4) a completed lawyer advertising and solicitation communication application form; and

(5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) Except as provided in paragraph (e) of this Rule, a lawyer shall file with the Advertising Review Committee of the State Bar of Texas no later than its first posting on the internet or other comparable network of computers information concerning the lawyer's or lawyer's firm's website. As used in this Rule, a "website" means a single or multiple page file, posted on a computer server, which describes a lawyer or law firm's practice or qualifications, to which public access is provided through publication of a uniform resource locator (URL). The filing shall include:

(1) the intended initial access page of a website;

(2) a completed lawyer advertising and solicitation communication application form; and

(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be set for the sole purpose of defraying the expense of enforcing the rules related to such websites,

(d) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated solicitation communication or advertisement may submit to the Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b), or the intended initial access page submitted pursuant to paragraph (c), including the application form and required fee; provided however, it shall not be necessary to submit a videotape or DVD if the videotape or DVD has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes or DVDs, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. If a lawyer submits an advertisement or solicitation communication for pre-approval, a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action but a finding of compliance is binding in favor of the submitting lawyer as to all materials actually submitted for pre-approval if the representations, statements, materials, facts and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(e) The filing requirements of paragraphs (a), (b), and (c) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable, Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information:

(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney", "lawyer", "law office", or "firm;"

(ii) the particular areas of law in which the lawyer or firm specializes or possesses special competence;

(iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(v) technical and professional licenses granted by this state and other recognized licensing authorities;

(vi) foreign language ability;

(vii) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);

(viii) identification of prepaid or group legal service plans in which the lawyer participates;

(ix) the acceptance or nonacceptance of credit cards;

(x) any fee for initial consultation and fee schedule;

(xi) other publicly available information concerning legal issues, not prepared or paid for by the firm or any of its lawyers, such as news articles, legal articles, editorial opinions, or other legal developments or events, such as proposed or enacted rules, regulations, or legislation;

(xii) in the case of a website, links to other websites;

(xiii) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;

(xiv) any disclosure or statement required by these rules; and

(xv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in the public media that:

(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and

(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted only to:

(i) existing or former clients;

(ii) other lawyers or professionals; or

(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;

(6) a solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;

(7) a solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or

(8) a solicitation communication that is requested by the prospective client.

(f) if requested by the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media or solicitation communication by which the lawyer seeks paid professional employment.

Proposed Rules (Clean Version)

Rule 7.01 Communications Concerning a Lawyer's Services

(a) A lawyer shall not make or sponsor a false or misleading communication about the qualifications or services of any lawyer or law firm. Information about legal services must be truthful and non-deceptive. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. A statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation, or if the statement is substantially likely to create unjustified expectations about the results the lawyer can achieve. This Rule governs all communications about a lawyer's services, including, but not limited to, advertisements and solicitation communications.

(b) A lawyer may practice law under a non-misleading trade name, including a trade name that includes the name of one or more deceased or retired members of the firm, or of a predecessor firm if there has been a succession in the firm's identity. A trade name may not imply a connection with a public or charitable legal services organization or a governmental entity, or utilize the name of a non-lawyer or a lawyer not associated with the firm. The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) Any statement or disclaimer required by these rules shall be made in each language used in the communication. However, the mere statement that a language is spoken or understood does not by itself require a statement or disclaimer in that language.

(d) A lawyer shall not state or imply that the lawyer can achieve results by means that violate these Rules or other law.

(e) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Rule 7.02 Communications Disseminated by Public Media

(a) A lawyer who advertises in public media shall publish or broadcast the name of at least one lawyer who is responsible for the content of the advertisement and disclose the lawyer's primary practice location.

(b) A lawyer who advertises in public media may include a statement that the lawyer has been awarded a Certificate of Special Competence by the Texas Board of Legal Specialization. A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(c) If an advertisement by a lawyer discloses willingness, or potential willingness, to render services on a contingent fee basis, the advertisement must state whether the client will be obligated to pay for other expenses, such as costs of litigation.

(d) A lawyer who advertises in public media a specific fee or range of fees for a particular service shall conform to the advertised fee or range of fees for the period during which the advertisement is reasonably expected to be in circulation or otherwise expected to be effective in attracting clients, unless the advertisement specifies a shorter period. However, a lawyer is not bound to conform to the advertised fee or range of fees for a period of more than one year after the date of publication, unless the lawyer has expressly promised to do so.

Rule 7.03 Solicitation of Paid Professional Employment

(a) The following definitions apply to this rule:

(1) "Regulated telephone, social media, or other electronic contact" means any telephone, social media, or electronic communication initiated by a lawyer, or by any person acting on behalf of a lawyer, that involves communication in a live or electronically interactive manner.

(2) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not, for pecuniary gain, solicit through in-person contact, or through regulated telephone, social media, or electronic communication, professional employment from a non-client who has not sought the lawyer's advice or employment, unless the target of the solicitation is:

a lawyer,

a person who has a family, close personal, or prior business or professional relationship with the lawyer, or

a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.

(c) A lawyer shall not send, deliver, or transmit, or knowingly permit or cause another person to send, deliver, or transmit, a written, audio, audiovisual, digital media, recorded telephone message, or other electronic communication to a prospective client, if:

(1) the communication involves coercion, duress, overreaching, intimidation, or undue influence;

(2) the communication is designed to resemble legal pleadings or other legal documents; or

(3) the communication is not plainly marked or clearly designated an "ADVERTISEMENT" unless the target of the solicitation is:

(i) a lawyer

(ii) a person who has a family, close personal, or prior business or professional relationship with the lawyer, or

(iii) a person who is known by the lawyer to be an experienced user of the type of legal services involved for business matters.(d) A lawyer shall not pay, give, or offer to pay or give, anything of value to a person not licensed to practice law for soliciting or referring prospective clients for paid professional employment, except nominal gifts given as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services. This Rule does not prohibit a lawyer from paying reasonable fees for advertising and public relations services or the usual charges of a lawyer referral service that meets the requirements of Occupations Code Title 5, Subtitle B, Chapter 952.

(e) Except as otherwise permitted, a lawyer shall not, for the purpose of securing professional employment, pay, give, or advance, or offer to pay, give, or advance, anything of value to a prospective client, other than actual litigation expenses or financial assistance expressly permitted by law.

(f) This Rule does not prohibit communications authorized by law, such as notice to members of a class in class action litigation.

Rule 7.04 Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations

(a) A lawyer shall file with the staff of the Advertising Review Committee of the State Bar of Texas, no later than the date of dissemination of an advertisement of legal services via public media, or the date of a solicitation communication sent by any means, including social media, for the purpose of obtaining professional employment:

(1) a copy of the advertisement or solicitation communication (including packaging if applicable) in the form in which it appeared or will appear upon dissemination;

(2) a completed lawyer advertising and solicitation communication application; and

(3) payment to the State Bar of Texas of a fee set by the Board of Directors.

(b) If requested by the staff of the Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement or written, recorded, electronic, or digital solicitation communication.

Rule 7.05 Communications Exempt from Filing Requirements

(a) The filing requirements of these rules do not extend to any of the following materials, provided those materials comply with Rule 7.01:

(1) an advertisement in public media that contains only part or all of the following information,

(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, electronic addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney," "lawyer," "law office," or "firm";

(ii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(iii) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(iv) the educational background of the lawyer or lawyers;

(v) technical and professional licenses granted by this state and other recognized licensing authorities;

(vi) foreign language abilities;

(vii) particular areas of law in which one or more lawyers are certified by the Texas Board of Legal Specialization;

(viii) identification of prepaid or group legal service plans in which the lawyer participates;

(ix) the acceptance or nonacceptance of credit cards;

(x) any fee for initial consultation and fee schedule;

(xi) in the case of a website, links to other websites;

(xii) sponsorship by the lawyer or firm of a charitable, civic, or community program or event, or sponsorship of a public service announcement;

(xiii) any disclosure or statement required by these rules; and

(xiv) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in public media that:

(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and

(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) in the case of communications sent, delivered, or transmitted to, rather than accessed by, intended recipients, a newsletter, whether written, digital, or electronic, provided that it is sent, delivered, or transmitted mailed only to:

(i) existing or former clients;

(ii) other lawyers or professionals; or

(iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization.

Rule 7.06 Prohibited Employment

(a) A lawyer shall not accept or continue employment in a matter when that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm; or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter unless nothing of value is given thereafter in return for that employment.

[7.07 DELETED]

TRD-201804910
Cory Squires
Staff Liaison
State Bar of Texas
Filed: November 15, 2018

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - October 2018

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period October 2018 is $50.14 per barrel for the three-month period beginning on July 1, 2018, and ending September 30, 2018. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of October 2018, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period October 2018 is $2.10 per mcf for the three-month period beginning on July 1, 2018, and ending September 30, 2018. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of October 2018, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of October 2018 is $70.76 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of October 2018, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of October 2018 is $3.21 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of October 2018, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

Issued in Austin, Texas, on November 16, 2018.

TRD-201804949
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: November 16, 2018

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Credit Union Department

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from United Heritage Credit Union Credit Union, Austin, Texas to expand its field of membership. The proposal would permit voting members and employees of the Texas Consumer Council who reside in Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201804913
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 15, 2018

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following applications:

Applications to Expand Field of Membership - Approved

Alliance Credit Union, Lubbock, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #1, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #2, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #3, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #4, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #5, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #6, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #7, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #8, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #9, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #10, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #11, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #12, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

Texas Dow Employees Credit Union #13, Lake Jackson, Texas - See *Texas Register* issue dated August 24, 2018

LibertyOne Credit Union, Arlington, Texas - See *Texas Register* issue dated September 28, 2018

Application to Expand Field of Membership - Terminated

FivePoint Credit Union, Nederland, Texas - See *Texas Register* issue dated April 27, 2018

TRD-201804911
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 15, 2018

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following application:

Merger or Consolidation--Approved

Dallas Federal Credit Union, (Dallas) and Neighborhood Credit Union (Dallas) - See *Texas Register* issue on May 25, 2018 (43 TexReg 3495).

TRD-201804912
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 15, 2018

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Texas Education Agency

Public Notice of Texas Request of a Waiver from 1.0 Percent State Cap on the Percentage of Students Who Take an Alternate Assessment

Purpose and Scope of Waiver Request. Texas is requesting a waiver from the U.S. Department of Education (USDE) regarding the 1.0 percent threshold on the percentage of students statewide who participate in alternate assessments aligned with alternate academic achievement standards (AA-AAAS) during the 2018-2019 school year.

The USDE is allowing states to request a waiver of the 1.0 percent cap in the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), §1111(b)(2)(D)(i)(I), on the number of students who participate in AA-AAAS. As described in 34 Code of Federal Regulations §200.6(c)(3), a state may not prohibit a district from assessing more than 1.0 percent of its assessed students with an AA-AAAS. However, a state must require a district that assesses more than 1.0 percent of its assessed students in any subject with an AA-AAAS to submit information to the state justifying the need to exceed the 1.0 percent threshold. States must provide appropriate guidance and oversight of each district that is required to submit such an explanation and must make the explanation publicly available, provided that it does not reveal personally identifiable information about an individual student.

As a result, Texas is seeking a waiver from this requirement pursuant to the ESEA, as amended by the ESSA, §8401(b). Specifically, Texas is requesting a limited waiver of the ESEA, as amended by the ESSA, §1111(b)(2)(D)(i)(I), so that the state's assessment system may have

slightly more than 1.0 percent of students taking the AA-AAAS during the 2018-2019 school year. Texas requested and was granted a wavier for the previous school year.

The requested waiver would be effective through the 2018-2019 school year. Texas will verify that each district that assesses more than 1.0 percent of its assessed students using an AA-AAAS followed the state's guidelines for participation in the AA-AAAS and will address any disproportionality in the percentage of students in any subgroup taking an AA-AAAS.

A copy of the waiver request is available on the Texas Education Agency website at https://tea.texas.gov/student.assessment/special-ed/staaralt/.

Public Comments. The public comment period on the waiver request begins November 16, 2018, and ends December 17, 2018. Comments on the waiver request may be submitted electronically to assessmentwaiver@tea.texas.gov.

Further Information. For more information, contact Julie Guthrie, director of policy and publications, by mail at Student Assessment Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9536; or by email at assessmentwaiver@tea.texas.gov.

TRD-201804959
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 16, 2018

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Request for Applications Concerning the 2019-2021 Public Charter School Program Start-Up (Subchapters D and E) Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-19-102 is authorized by P.L. 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Title V, Part B, Subpart 1, Charter School Programs, and will be contingent on federal appropriations.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-19-102 from eligible charter schools to provide initial start-up funding for planning and/or implementing charter school activities. This competitive grant opportunity is available for charter schools that meet the federal definition of a charter school, have never received Public Charter School Program Start-Up funds, and are one of the following: (1) an open-enrollment charter school authorized by the commissioner of education under the Generation 23 charter application pursuant to the Texas Education Code (TEC), Chapter 12, Subchapter D or E; or (2) an open-enrollment charter school designated by the commissioner for the 2019-2020 school year as a new school under an existing charter. Charters awarded by the commissioner under the Generation 23 application that have been notified of contingencies to be cleared prior to receiving a charter contract are considered eligible to apply for the grant. However, these charters should be diligent in working with TEA to complete the contingency process as all contingencies pertaining to the charter application and approval must be cleared and a contract issued to the charter holder prior to receiving grant funding, if awarded. Charter schools applying for a New School Designation for the 2019-2020 school year are considered eligible to apply for the grant. However, the commissioner must designate the campus as a new school under an existing charter prior to the charter receiving grant funding, if awarded.

Description. The purpose and goals of the 2019-2021 Public Charter School Program Start-Up (Subchapters D and E) grant program are to provide financial assistance for the start-up and implementation of charter schools and expand the number of high-quality charter schools available to students across the state.

Dates of Project. The 2019-2021 Public Charter School Program Start-Up (Subchapters D and E) grant program will be implemented primarily during the 2019-2020 and 2020-2021 school years. Applicants should plan for a starting date of no earlier than April 1, 2019, and an ending date of no later than February 28, 2021, contingent on the continued availability of federal funding.

Project Amount. Approximately $6.4 million is available for funding the 2019-2021 Public Charter School Program Start-Up (Subchapters D and E) grant program. It is anticipated that approximately 8 grants of no more than $800,000 each will be awarded. Applicants that are in their first or second year of eligibility may apply for grant funding. However, if selected for funding, the award amount will be prorated based on the remaining months of eligibility. This project is funded 100 percent with federal funds and is contingent on federal appropriations.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on Friday, December 14, 2018, from 10:00 a.m. to 12:00 p.m. Register for the webinar at https://attendee.gotowebinar.com/register/3168699447457816579. Questions relevant to the RFA may be emailed to Arnoldo Alaniz at CharterSchools@tea.texas.gov or faxed to (512) 463-9732 prior to Friday, December 7, 2018. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at CharterSchools@tea.texas.gov no later than Tuesday, December 18, 2018. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Wednesday, January 2, 2019. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and

Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, January 31, 2019, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Grants Administration Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201804947
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 16, 2018

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 7, 2019.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **January 7, 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: Ah Tun and Tial Iang dba Save N Save; DOCKET NUMBER: 2018-1057-PST-E; IDENTIFIER: RN102044765; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $4,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: BW Gas & Convenience Retail, LLC dba Yesway 1070; DOCKET NUMBER: 2018-1072-PST-E; IDENTIFIER: RN102429123; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the TCEQ within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $7,588; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Chris Truong LLC dba Crystal Grocery 2; DOCKET NUMBER: 2018-1120-PST-E; IDENTIFIER: RN108874157; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the 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: $11,275; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Carthage; DOCKET NUMBER: 2018-0474-MSW-E; IDENTIFIER: RN102834256; LOCATION: City of Carthage, Panola County; TYPE OF FACILITY: type V municipal solid waste (MSW) transfer station; RULES VIOLATED: 30 TAC §30.213(a), by failing to employ at least one licensed individual who supervises or manages the operations of an MSW facility; 30 TAC §§37.111, 37.8021, 330.63(j), and 330.503(b) and MSW Registration Number 40172, Section IV. Financial Assurance, by failing to provide financial assurance for closure, post-closure, and corrective action cost estimates; 30 TAC §330.219(a) and MSW Registration Number 40172, Site Operating Plan, Item 2.0 Record Keeping Requirements, by failing to maintain records of the registration, approved Site Layout Plan and Site Operating Plan, random inspection records, training records, and any other required plan or other related document at the facility; 30 TAC §330.227 and MSW Registration Number 40172, Section III. Facility Design, Construction, and Operation, Item B, by failing to design storage and processing areas to control and contain spills and contaminated water from leaving the facility; and 30 TAC §330.241(b) and MSW Registration Number 40172, Site Operating Plan, Item 20.0 Overloading and Breakdown, by failing to limit the storage of waste to no more than one week after a significant work stoppage occurs due to a mechanical breakdown; PENALTY: $13,876; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: City of San Augustine; DOCKET NUMBER: 2018-1067-PWS-E; IDENTIFIER: RN103779302; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to comply with the MCL for TTHM; PENALTY: $840; ENFORCEMENT COORDINATOR:

Steven Hall, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2018-0986-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Federal Operating Permit Number O1426, Special Terms and Conditions Number 38, New Source Review Permit Numbers 1768, PSDTX1272, and N142, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,563; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,625; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Grace International Churches and Ministries, Incorporated dba Center for Empowerment; DOCKET NUMBER: 2018-1087-PWS-E; IDENTIFIER: RN106679616; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(c), by failing to provide the results for nitrate sampling to the executive director for the January 1, 2017 - December 31, 2017, monitoring period; PENALTY: $72; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: GROVES XPRESS LLC dba Super Stop; DOCKET NUMBER: 2018-1143-PST-E; IDENTIFIER: RN101822856; LOCATION: Groves, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report suspected releases to the agency within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate suspected releases of regulated substances within 30 days of discovery; PENALTY: $15,802; ENFORCEMENT COORDINATOR: Berenice Munoz, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Susser Petroleum Company LLC dba Snax Max 1; DOCKET NUMBER: 2018-0747-PST-E; IDENTIFIER: RN102964707; LOCATION: Niederwald, Hays County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.48(a) and (b), by failing to ensure that the UST system is operated, maintained, and managed in a manner that will prevent releases of regulated substances; 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to ensure that the corrosion protection system is designed, installed, and maintained in a manner that will ensure that the corrosion protection is continuously provided to all metal components of the UST system; 30 TAC §334.50(b)(2) and (d)(1)(B)(iii)(I) and TWC, §26.3475(a) and (c)(1), by failing to conduct the inventory volume measurement for regulated substance inputs, withdrawals, and recording the amount still remaining in the tank each operating day, and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with overfill prevention equipment; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; and 30 TAC §334.606, by failing to maintain required training certification documentation on-site and make it available upon request by agency personnel; PENALTY: $61,916; ENFORCEMENT COORDINATOR: Rahim Momin, (512) 239-2544; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: Victoria County Water Control and Improvement District Number 2; DOCKET NUMBER: 2018-1193-PWS-E; IDENTIFIER: RN101398303; LOCATION: Placedo, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 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 minimum disinfectant residual of 0.2 milligrams per liter free chlorine throughout the distribution system at all times; PENALTY: $441; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201804939
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 16, 2018

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 7, 2019.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2019.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: LANGTRY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2017-1384-PWS-E; TCEQ ID NUMBER: RN101454791; LOCATION: approximately 862 feet northwest of the intersection of Langtry Road and United States Highway 90 and approximately one mile northwest of Langtry, Val Verde County; TYPE OF FACILITY: public water system; RULES VIOLATED:

30 TAC §290.109(c)(4)(B), by failing to collect a raw groundwater source *Escherichia coli* sample from the facility's two active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample; 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct repeat coliform monitoring and regarding the failure to submit a Disinfectant Level Quarterly Operating Report to the ED; PENALTY: $1,450; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: Marie Dolgener dba Bernhard Trailer Park; DOCKET NUMBER: 2017-1535-PWS-E; TCEQ ID NUMBER: RN109450668; LOCATION: 200 Bernhard Road near Fredericksburg, Gillespie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: Texas Health and Safety Code, §341.031(a) and 30 TAC §290.106(f)(2), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $780; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Perry J. Sheffield dba Sheffield Recycling; DOCKET NUMBER: 2017-1205-MSW-E; TCEQ ID NUMBER: RN103074068; LOCATION: 1111 Longhorn Trail, Wimberley, Hays County; TYPE OF FACILITY: scrap yard; RULE VIOLATED: 30 TAC §328.63(c), by failing to obtain a registration to process scrap tires; PENALTY: $3,750; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(4) COMPANY: Royal Mfg Co, LP; DOCKET NUMBER: 2017-0611-MLM-E; TCEQ ID NUMBER: RN105434708; LOCATION: 9998 Doerr Lane, Schertz, Comal County; TYPE OF FACILITY: lubricant, oil, and grease manufacturing facility; RULES VIOLATED: TWC, §26.121 and 30 TAC §335.4(1), by causing, suffering, allowing, or permitting the collection, handling, storage, processing, or disposal of industrial solid waste into or adjacent to any water in the state; and TWC, §26.121, 30 TAC §281.25(a)(4), and Texas Pollutant Discharge Elimination System Multi-Sector Stormwater General Permit Number TXR05W533 (the Permit), Part III, Section A, by failing to develop and implement a stormwater pollution prevention plan; PENALTY: $32,500; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: S & N VENTURES LLC dba TEXACO FOOD & LAUNDROMAT; DOCKET NUMBER: 2016-1845-PST-E; TCEQ ID NUMBER: RN101568293; LOCATION: 1201 East Henderson Street, Cleburne, Johnson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Texas Hill Country Landscaping, Inc. dba Quality Organic Products; DOCKET NUMBER: 2016-1688-MLM-E; TCEQ ID NUMBER: RN105468904; LOCATION: 15497 Lookout Road, Selma, Bexar County; TYPE OF FACILITY: composting site; RULES VIOLATED: Texas Health and Safety Code, §382.085(a) and (b) and 30 TAC §101.4, by failing to prevent nuisance odor conditions; 30 TAC §328.4(g)(2), (9), and (11), by failing to maintain a volume of combustible material at the Site under the maximum volume of combustible material stated in the current Notice of Intent; 30 TAC §§37.111, 37.921(a), and 328.5(d), by failing to maintain continuous financial assurance for the closing of a recycling site that stores combustible material outdoors; 30 TAC §328.4(g)(4) and (6), by failing to keep any pile of unprocessed combustible material from exceeding 8,000 square feet, and failing to maintain at least 40 feet of separation from piles of unprocessed combustible materials; 30 TAC §328.4(g)(4), (6), and (7), by failing to keep any pile of combustible material from exceeding a height of 25 feet; failing to keep any pile of processed combustible material from exceeding 25,000 square feet; failing to maintain a minimum separation equal to the pile height between piles of processed combustible materials; and failing to maintain the setback distance of at least 50 feet from all property boundaries; and TWC, §26.121(a)(2) and 30 TAC §330.15(a)(1) and (2), by causing, suffering, allowing, or permitting the unauthorized discharge of waste into or adjacent to water in the state; PENALTY: $46,423; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201804941
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 16, 2018

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 7, 2019.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required

to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2019.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Jim Dollins; DOCKET NUMBER: 2018-0713-WQ-E; TCEQ ID NUMBER: RN105464119; LOCATION: 4201 J J Flewellen Road, Waco, McLennan County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(d) and TCEQ AO Docket Number 2016-0568-WQ-E, Ordering Provisions Numbers 2.a.i. and ii., by failing to renew the APO registration annually as regulated activities continued; PENALTY: $10,000; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Jose M. Baca; DOCKET NUMBER: 2018-0386-MSW-E; TCEQ ID NUMBER: RN109946426; LOCATION: 4126 Durazno Avenue, El Paso, El Paso County; TYPE OF FACILITY: automotive maintenance facility; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste at the site; PENALTY: $2,852; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Michael Ninh; DOCKET NUMBER: 2017-1417-WQ-E; TCEQ ID NUMBER: RN109495424; LOCATION: 4737 Lewis Avenue, Midlothian, Ellis County; TYPE OF FACILITY: scrap and waste recycling facility; RULES VIOLATED: TWC, §26.121(a), 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: $1,250; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201804940
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 16, 2018

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Texas Health and Human Services Commission

Public Notice - Methodology for Determining Caseload Reduction Credit for the Temporary Assistance for Needy Families Program for Federal Fiscal Year 2019

The Texas Health and Human Services Commission (HHSC) announces its intent to seek comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2019. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2018. This methodology and the resulting estimated caseload reduction credit will be submitted for approval to the United States Department of Health and Human Services, Administration for Children and Families.

Section 407(b)(3) of the Social Security Act provides for a TANF caseload reduction credit, which gives a state credit for reducing its TANF caseload between a base year and a comparison year. To receive the credit, a state must complete and submit a report that, among other things, describes the methodology and the supporting data that the state used to calculate its caseload reduction estimates. See 45 C.F.R. §261.41(b)(5). Prior to submitting the report, the state must provide the public with an opportunity to comment on the estimate and methodology. See Id. at §261.41(b)(6).

As the state agency that administers the TANF program in Texas, HHSC believes it is eligible for a caseload reduction credit and has developed the requisite estimate and methodology. HHSC hereby notifies the public of the opportunity to submit comments.

HHSC will post the methodology and the estimated caseload reduction credit on the HHSC website for FFY2019 at *https://hhs.texas.gov/about-hhs/records-statistics/data-statistics/temporary-assistance-needy-families-tanf-statistics* by November 30, 2018. The public comment period begins November 30, 2018, and ends December 14, 2018.

Written Comments.

Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission Attention: Hilary Davis

P.O. Box 149030

MC 2115 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission Attention: Hilary Davis 909 W. 45th Street Bldg. 2, MC 2115 Austin, Texas 78751 Phone number for package delivery: (512) 206-5556

Fax

Attention: Access and Eligibility Services - Program Policy, Hilary Davis

Fax Number: (512) 206-5141

Email

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TRD-201804956
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 16, 2018

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Texas Department of Housing and Community Affairs

Notice of Public Hearing Multifamily Housing Revenue Bonds (McMullen Square Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the City of San Antonio Memorial Branch Library, 3222 Culebra Road, San Antonio, TX 78228 at 6:15 p.m. on December 20, 2018. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $10,100,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to TCD MCM, LP, a Texas limited partnership, or a related person or affiliate thereof (the "Borrower"), to finance the costs of acquiring and rehabilitating an approximately 100-unit affordable, multifamily housing development known as McMullen Square Apartments that is located at 537 N. General McMullen Drive, San Antonio, Bexar County, Texas 78228 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or shannon.roth@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Shannon Roth, ADA Responsible Employee, at (512) 475-3929 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

http://www.tdhca.state.tx.us/multifamily/communities.htm

TRD-201804946
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: November 16, 2018

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Texas Lottery Commission

Scratch Ticket Game Number 2031 "Cinco Connect"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2031 is "CINCO CONNECT". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2031 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2031.

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, 06, 07, 08, 09, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 5 SYMBOL, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $250, $500 and $50,000.

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. 2031 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
5 SYMBOL	WIN
$3.00	THR$
$5.00	FIV$
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$

$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$250	TOFF
$500	FVHN
$50,000	50TH

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 (2031), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2031-0000001-001.

H. Pack - A Pack of the "CINCO CONNECT" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

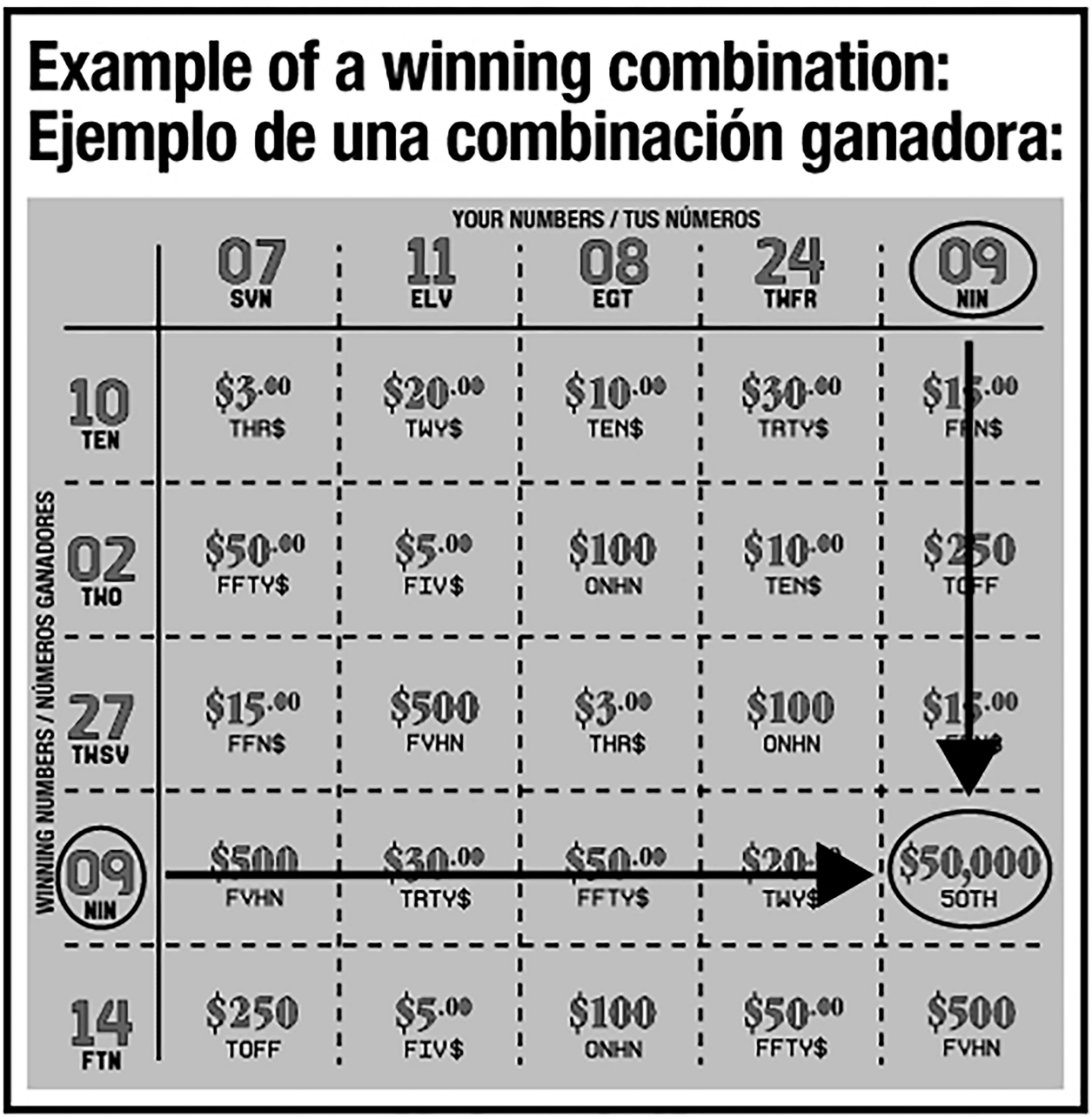
I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "CINCO CONNECT" Scratch Ticket Game No. 2031.

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 "CINCO CONNECT" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 35 (thirty-five) Play S ymbols. The player will scratch the Ticket to reveal 5 YOUR NUMBERS Play Symbols and 5 WINNING NUMBERS Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE shown where the two numbers meet in the prize grid. See the back of Ticket for example. If the player reveals a "5" Play Symbol in the YOUR NUMBERS play area, the player wins ALL PRIZES in that column. El jugador raspa el boleto para revelar 5 Símbolos de Juego de TUS NÚMEROS y 5 Símbolos de Juego de NÚMEROS GANADORES. Si el jugador iguala cualquiera de los Símbolos de Juego de TUS NÚMEROS con cualquiera de los Símbolos de Juego de los NÚMEROS GANADORES, el jugador gana el PREMIO mostrado en donde los dos números se cruzan en la tabla de premios. Vea ejemplo al reverso del boleto. Si el jugador revela un Símbolo de Juego de "5" en el área de juego de TUS NÚMEROS, el jugador gana TODOS LOS PREMIOS para esa columna. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

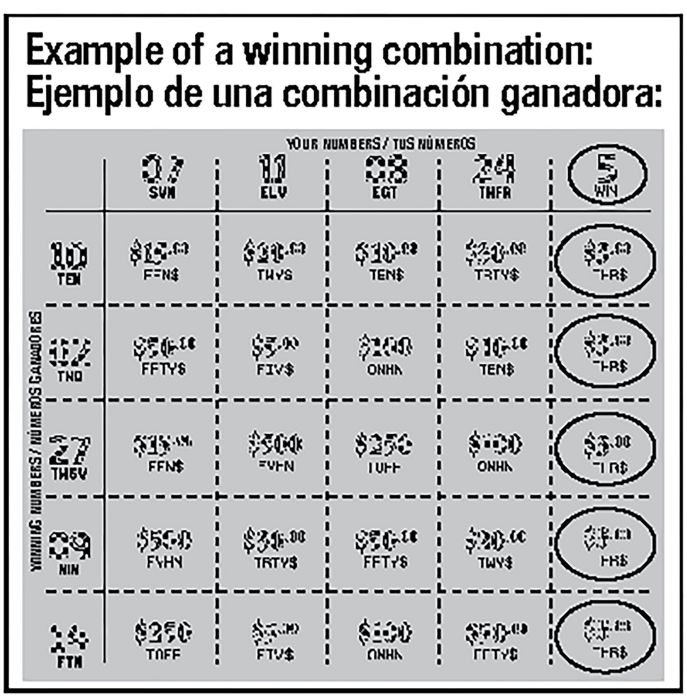
A. An example of a winning Ticket where two numbers meet in the prize grid is as follows:

Figure 2: GAME NO. 2031 - 2.0A



B. An example of a winning Ticket where a "5" Play Symbol is revealed in the YOUR NUMBERS play area is as follows:

Figure 3: GAME NO. 2031 - 2.0B



2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 35 (thirty-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 35 (thirty-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 35 (thirty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 35 (thirty-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. A Ticket can win up to twenty-five (25) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. On winning Tickets that win four (4) times or less, the YOUR NUMBERS/TUS NÚMEROS Play Symbols will be different.

E. YOUR NUMBERS/TUS NÚMEROS Play Symbols and WINNING NUMBERS/NÚMEROS GANADORES Play Symbols will only repeat on winning Tickets that win five (5) times or more.

F. Non-Winning Tickets will have five (5) different WINNING NUMBERS/NÚMEROS GANADORES Play Symbols.

G. Non-winning YOUR NUMBERS/TUS NÚMEROS Play Symbols will all be different.

H. YOUR NUMBERS/TUS NÚMEROS Play Symbols and WINNING NUMBERS/NÚMEROS GANADORES Play Symbols will not repeat on Non-Winning Tickets.

I. Non-winning Prize Symbols will never appear more than three (3) times.

J. The "5" (WIN) Play Symbol will never appear in the WINNING NUMBERS/NÚMEROS GANADORES Play Symbol spots.

K. The "5" (WIN) Play Symbol will only appear as dictated by the prize structure.

L. On Tickets that contain the "5" (WIN) Play Symbol, none of the WINNING NUMBERS/NÚMEROS GANADORES Play Symbols will match any of the YOUR NUMBERS/TUS NÚMEROS Play Symbols.

M. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "CINCO CONNECT" Scratch Ticket Game prize of $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $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 $30.00, $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 "CINCO CONNECT" Scratch Ticket Game prize of $50,000, 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 "CINCO CONNECT" 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 "CINCO CONNECT" 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 "CINCO CONNECT" 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 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2031. The approximate number and value of prizes in the game are as follows:

Figure 4: GAME NO. 2031 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	552,000	10.87
$5	408,000	14.71
$10	96,000	62.50
$15	144,000	41.67
$20	72,000	83.33
$30	31,200	192.31
$50	20,150	297.77
$100	9,600	625.00
$250	1,000	6,000.00
$500	500	12,000.00
$50,000	4	1,500,000.00

*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 4.50. 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. 2031 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. 2031, 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-201804931
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 15, 2018

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Texas Parks and Wildlife Department

Notice of Hearing and Opportunity to Comment

This is a notice of an opportunity for public comment and a public hearing on a Union Pacific Railroad application for a Texas Parks and Wildlife Department (TPWD) permit to disturb approximately 5,876 cubic yards of state-owned sand and gravel within the Trinity River bed in order to replace an existing bridge approximately 25 miles downstream of State Highway 105 and 390 feet upstream of US Highway 90 in Liberty County.

The hearing will be held at 11:00 a.m. on Monday, January 7, 2019, at TPWD headquarters, located at 4200 Smith School Road, Austin, TX 78744. The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing. Submit written comments, questions, or requests to review the application to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, TX 78744; fax (512) 389-4405; e-mail tom.heger@tpwd.texas.gov; or phone (512) 389-4583.

TRD-201804914
Robert D. Sweeney, Jr.
General Counsel
Texas Parks and Wildlife Department
Filed: November 15, 2018

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Public Utility Commission of Texas

Notice of Application for Minor Boundary Change

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 13, 2018, for

a certificate of convenience and necessity (CCN) service area boundary change within Taylor County.

Docket Style and Number: Application of AEP Texas, Inc. and Taylor Electric Cooperative, Inc. to Amend Certificates of Convenience and Necessity for Minor Boundary Changes in Taylor County, Docket Number 48877.

The Application: AEP Texas, Inc. and Taylor Electric Cooperative, Inc. (applicants) filed an application with the Commission seeking approval of minor boundary changes to electric CCN numbers 30028 and 30126 located in Taylor County. Specifically, AEP Texas seeks to decertify, and transfer where applicable, two areas under its CCN number 30028 so that they may be singly-certificated to Taylor Electric. One area is currently dually-certificated to the applicants and the other area is singly certificated to AEP Texas. Further, Taylor Electric seeks to decertify an area under its CCN number 30126 so that it may be singly-certificated to AEP Texas. The area is currently dually-certificated to the applicants.

Persons wishing to comment on the action sought or intervene should contact the commission no later than December 7, 2018 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48877.

TRD-201804963
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 2018

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 9, 2018, in accordance with the Texas Water Code.

Docket Style and Number: Application of Camp Joy Water and Texas Water Systems, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Upshur County, Docket Number 48863.

The Application: Camp Joy Water and Texas Water Systems, Inc. seek to transfer all of Camp Joy Water's facilities and water service area under water certificate of convenience and necessity number 12960 to Texas Water Systems. The requested transfer includes approximately 470 acres and 119 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 48863.

TRD-201804933
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 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 13, 2018, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Patriot Wind TE Holdco LLC Under §39.158 of the Public Utility Regulatory Act, Docket Number 48879.

The Application: Patriot Wind TE Holdco LLC filed an application for approval of three transactions. The first transaction is for the conveyance of Class A passive equity interests in Patriot Wind TE Holdco to Wells Fargo Central Pacific Holdings, Inc. and Avangrid Renewables. Patriot Wind TE Holdco is a wholly-owned subsidiary of Patriot Wind Holdings LLC. The second transaction is for the sale of Patriot Wind Holdings to Avangrid by Patriot Wind Class B LLC. In the final transaction, Patriot Wind TE Holdco will acquire 100% of the membership interests in Patriot Wind Farm, LLC, a wholly-owned subsidiary of Patriot Wind Seller LLC. Patriot Wind Farm is developing a 226.05 MW wind powered electric generation project in Nueces County that will be interconnected to the Electric Reliability Council of Texas (ERCOT). After all transactions are completed, Patriot Wind Holdings, Wells Fargo, and Avangrid will own 100% of the membership interests in Patriot Wind Farm. Patriot Wind TE Holdco will no longer own any electric generation facilities in Texas. The combined generation owned and controlled by Patriot Wind Holdings and its affiliates, Wells Fargo and its affiliates, and Avangrid and its affiliates following the proposed transactions will not exceed 20% of the total electricity offered for sale in ERCOT.

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 48879.

TRD-201804953
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 2018

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Notice of Application for Service Area Boundary Change

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 12, 2018, to amend a certificate of convenience and necessity (CCN) for a service area boundary change in Uvalde and Maverick Counties.

Docket Style and Number: Application of AEP Texas, Inc. and Rio Grande Electric Cooperative, Inc. for Certificate of Convenience and Necessity Service Area Boundary Changes in Uvalde and Maverick Counties. Docket Number 48873.

The Application: AEP Texas, Inc. and Rio Grande Electric Cooperative, Inc. seek minor boundary changes to electric CCN numbers 30028 and 30129, respectively. Specifically, Rio Grande seeks to transfer its service territory under CCN 30129 and located within the Uvalde Estates tract to AEP, and AEP seeks to transfer its service territory under CCN 30028 and located within the Faith Ranch and Hughes Ranch

tracts to Rio Grande. Approval of the application would result in AEP and Rio Grande being singly certificated in their respective CCNs. The requested boundary changes are the result of a settlement agreement entered into by the applicants pursuant to Docket No. 47186.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than November 16, 2018, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48873.

TRD-201804962
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 2018

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Notice of Application to Amend and Decertify a Certificate of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 8, 2018, to amend and decertify a certificate of convenience and necessity (CCN).

Docket Style and Number: Application of the City of Canton to Amend Water Certificate of Convenience and Necessity and to Decertify Canton Rural Water Supply Corporation in Van Zandt Count, Docket Number 48860.

The Application: City of Canton seeks to amend its CCN number 11315 to include the area currently served by Canton Rural Water Supply Corporation. The requested service area consists of approximately 11,269 acres and 300 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 48860.

TRD-201804932
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 2018

♦ ♦ ♦

Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on November 13, 2018, to amend a water certificate of convenience and necessity (CCN) in Kaufman County by expedited release.

Docket Style and Number: Petition of 130 Windmill Farms, LP to Amend High Point Water Supply Corporation's Certificate of Convenience and Necessity in Kaufman County by Expedited Release, Docket Number 48876.

The Petition: 130 Windmill Farms, LP requests the expedited release of 152.32 acres of land located within the boundaries of High Point Water Supply Corporation's water CCN number 10841 in Kaufman County.

Persons wishing to file a written protest or motion to intervene and file comments on the petition should contact the commission no later than December 13, 2018, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 48876.

TRD-201804934
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 2018

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Texas Department of Transportation

Notice of Public Hearing - Brazoria County Acquisition for Gulf Intracoastal Waterway Dredge Material Placement Area; CSJ (Project Number): 5500-00-026

The Texas Department of Transportation (TxDOT) will conduct a public hearing regarding the acquisition of property for use as a placement area for materials dredged from the main channel of the Gulf Intracoastal Waterway (GIWW) on Tuesday, December 11, 2018. The public hearing will take place at the Port Freeport Board Room located at 1100 Cherry Street, Freeport, Texas, 77541. Displays will be available during the open house for viewing at 5:30 p.m. with the formal hearing and presentation starting at 6:30 p.m. The purpose of the hearing is to present the proposed placement area and to receive public comments.

This notice is provided as required by the Texas Coastal Waterways Act, Transportation Code, §51.006. The proposed site to be considered for acquisition is a 355.26 acre parcel of land in the Henry Burt Abstract - 151 and the D. Gilliland Survey Abstract - 195, Brazoria County, Texas. TxDOT is acquiring the property in order to fulfill its responsibilities as the non-federal sponsor of the GIWW. These responsibilities include providing right of way and placement areas for the U.S. Army Corps of Engineers (USACE) operation and maintenance of the GIWW. Right of way and displacement requirements are not applicable for this acquisition.

Maps, USACE environmental documentation, and other displays concerning the proposed site will be available during the open house and public hearing. These displays are on file and available for inspection from Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. at the TxDOT Riverside Campus, 118 E. Riverside Drive, Austin, Texas 78704. To schedule an appointment, please contact Emily Shelton at (512) 486-5697.

Verbal and written comments from the public regarding the proposed acquisition are requested and may be presented at the hearing, or submitted in person or by mail to the TxDOT Riverside Campus, Attention: Maritime Division, 118 E. Riverside Drive, Austin, Texas 78705. Comments may also be submitted electronically to emily.shelton@txdot.gov or online at www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings/maritime/121118.html. Comments must be received on or before Friday, January 4, 2019, to be considered part of the official hearing record.

The hearing will be conducted in English. Persons interested in attending who have special communication or accommodation needs, such as the need for an interpreter, are encouraged to contact the TxDOT Maritime Division at (512) 486-5697. Requests should be made at least three days prior to the hearing. Please be aware that advance notice is requested as some accommodations may require time for TxDOT to

arrange. Every reasonable effort will be made to accommodate these needs.

For further information, please contact Matthew Mahoney, Waterways Coordinator, Maritime Division at (512) 486-5630 or matthew.mahoney@txdot.gov.

TRD-201804395

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 15, 2018

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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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