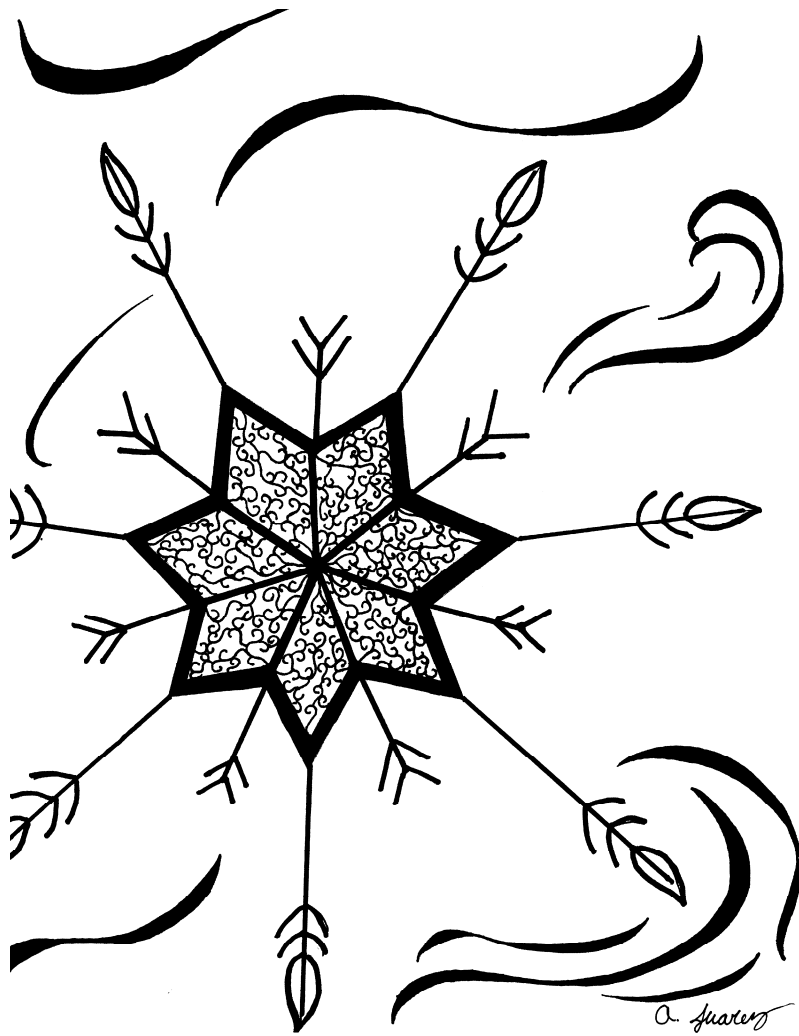

TEXAS REGISTER

Volume 44 Number 8

February 22, 2019

Pages 757 - 910



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.

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

Secretary of State – David Whitley

Director - Robert Summers

Staff

Lauri Caperton
Cristina Jaime
Belinda Kirk
Jill S. Ledbetter
Cecilia Mena
Joy L. Morgan
Breanna Mutschler
Andrea Reyes
Barbara Strickland

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Open Meetings

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

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

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

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

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

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

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

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

Additional information about state government may be found here:

<http://www.texas.gov>

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

THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-0268-KP

Requestor:

Ms. Michelle Darilek, CPA
Jackson County Auditor
411 North Wells, Room 201
Edna, Texas 77957

Re: Whether the Jackson County Navigation District may require an easement for new and existing aerial utility lines which cross over its boundaries (RQ-0268-KP)

Briefs requested by March 5, 2019

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

TRD-201900506
Ryan Vassar
Chief, General Counsel Division
Office of the Attorney General
Filed: February 13, 2019



RQ-0269-KP

Requestor:

The Honorable Donna Campbell, M.D.
Chair, Committee on Veterans Affairs and Border Security
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Authority of municipalities to regulate firearm and ammunition sales through zoning and other regulations (RQ-0269-KP)

Briefs requested by March 8, 2019

RQ-0270-KP

Requestor:

The Honorable Vince Ryan
Harris County Attorney
1019 Congress Street, Floor 15
Houston, Texas 77002-1799

Re: Whether a county commissioners court may appoint a sitting regent of a public university system to a county hospital district's board of trustees (RQ 0270 KP)

Briefs requested by March 12, 2019

RQ-0271-KP

Requestor:

Mr. Matthew S. Weingardt, CPA
Val Verde County Auditor
901 Bedell Avenue, Suite A
Del Rio, Texas 78840

Re: Use of pretrial intervention program funds collected under Code of Criminal Procedure article 102.0121 to supplement the salary of an attorney or staff member who assists in the administration of the program (RQ-0271-KP)

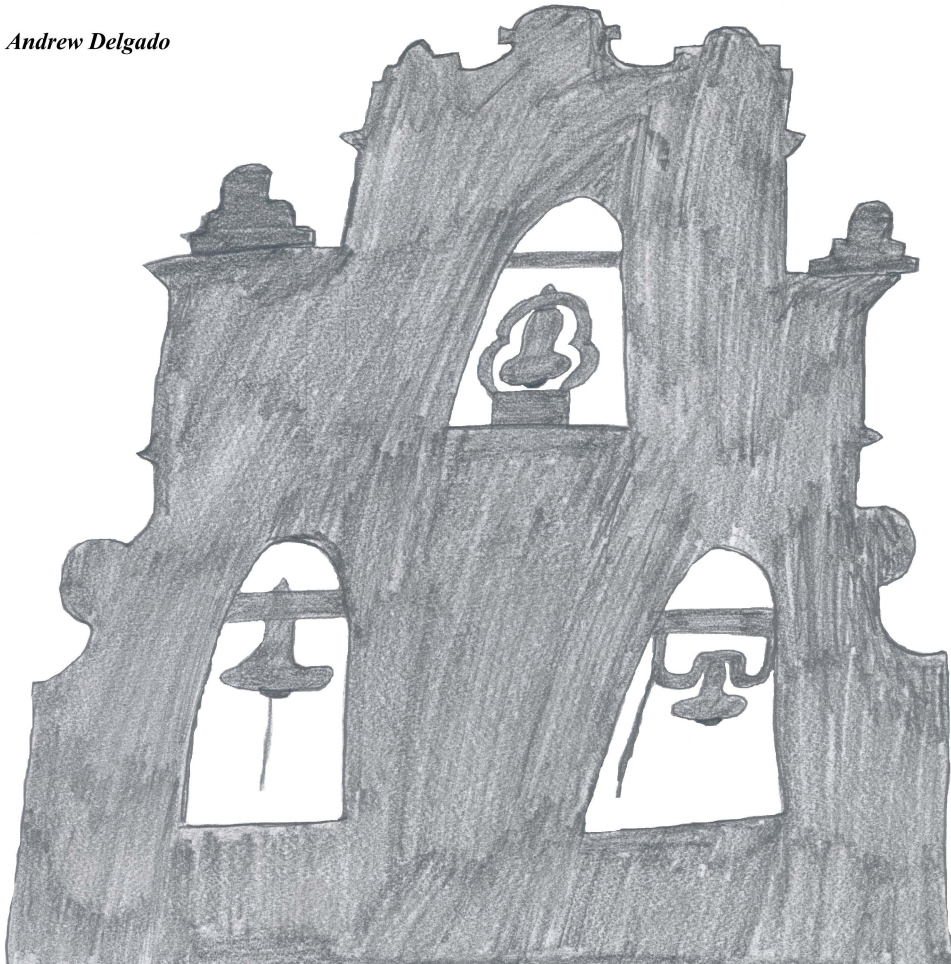
Briefs requested by March 13, 2019

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

TRD-201900507
Ryan Vassar
Chief, General Counsel Division
Office of the Attorney General
Filed: February 13, 2019



Andrew Delgado



PROPOSED RULES

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

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

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER A. PROCUREMENT

16 TAC §401.101, §401.105

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.101 (Lottery Procurement Procedures) and §401.105 (Major Procurement Approval Authority, Responsibilities and Reporting). The purpose of the proposed amendments to 16 TAC §401.101 is to reflect updates made to the *Texas Procurement and Contract Management Guide*, and to reflect current agency procedure. Proposed amendments to definitions and dollar amount thresholds within the section mirror those found in the *Texas Procurement and Contract Management Guide*. Also, grammatical corrections were made to the text to increase clarity.

The purpose of the proposed amendments to 16 TAC §401.105 is to align the language in this section with current procurement procedures observed by the Commission, and with the definitions of like terms found in the *Texas Procurement and Contract Management Guide*.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mike Fernandez, Administration Division Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is improved clarity and transparency regarding the Commission's procurement procedures.

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments to 16 TAC §401.101 (Lottery Procurement Procedures) and §401.105 (Major Procurement Approval Authority, Responsibilities and Reporting). For

each year of the first five years the proposed amendments will be in effect, Kathy Pyka, Controller, has determined the following:

- (1) The proposed amendments do not create or eliminate a government program.
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.
- (4) The proposed amendments do not require an increase or decrease in fees paid to the Commission.
- (5) The proposed amendments do not create a new regulation.
- (6) The proposed amendments do not expand or limit an existing regulation.
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.
- (8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Lea Garey, Senior Contracts Attorney, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery; under §466.1005(b), which requires the Commission to review and approve all major procurements as provided by Commission rule and, by rule, to establish a procedure to determine what constitutes a major procurement; under §466.101(a), which authorizes the Commission and executive director to establish procedures for the procurement of goods and services necessary to carry out the purposes of Chapter 466; and, under §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

§401.101. Lottery Procurement Procedures.

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

- (1) Act--The State Lottery Act.
- (2) Agency--For the purposes of this subchapter that deals with procurements for the administration of the lottery, the term "agency" refers to the commission as defined in paragraph (5) of this subsection.
- (3) Best and Final Offer (BAFO)--A revised final bid or proposal submitted after all clarifications, discussions, and negotiations with the agency.
- (4) Executive director--The executive director of the Commission.
- (5) Commission--The state agency established under Chapter 466 and Chapter 467, Government Code. However, this subchapter applies only to the procurement of goods and services for the administration of the lottery authorized by the State Lottery Act. For the sake of clarity, this subchapter will refer to the commission as "agency" and to the appointed board as the "Texas Lottery Commission".
- (6) Cost--The price at which the agency can purchase goods and/or services.
- (7) Electronic State Business Daily or Business Daily--An online directory [The website] administered by the Comptroller of Public Accounts, or its successor, that publishes solicitations for the purpose of informing vendors of procurement opportunities and provides public notice of contract awards. [on which procurement opportunities exceeding \$25,000 are advertised in electronic format.]
- (8) Emergency procurement--A situation requiring the state agency to make the procurement more quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the state.
- (9) Goods--Supplies, materials, and equipment.
- (10) IFB--A written invitation for bids.
- (11) Lottery--The procedures and operations of the agency under the State Lottery Act through which prizes are awarded or distributed by chance among persons who have paid, or unconditionally agreed to pay, for a chance or other opportunity to receive a prize.
- (12) Nonresident bidder or proposer--A person whose principal place of business is not in Texas, but does not include a bidder whose majority owner or parent company has its principal place of business in Texas.
- (13) Principal place of business--The state in which the head office of a business is located, and generally, where the executive management is located and the business records are maintained.
- (14) Produced in Texas--Those goods that are manufactured in Texas, excluding the sole process of packaging or repackaging. Packaging or repackaging does not constitute being manufactured in Texas.
- (15) Proprietary purchase--A product or service that is unique to a single vendor or manufacturer and is not available from other sources.
- (16) Resident bidder or proposer--A person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.
- (17) RFP--A written request for proposals.
- (18) RFQ--A written request for qualifications.

(19) Services--The furnishing of skilled or unskilled labor or professional work. [Fungible services, specialized services, or unique services, including, by way of example, but not limitation: facility services (i.e., the lease of real property, including utility and custodial service); telecommunications services; advertising services; consultant services; personal services and professional services.]

(20) State or statewide contract--A contract for goods or services established and administered by another state agency (e.g., Texas Comptroller of Public Accounts, Texas Department of Information Resources) for use by all state agencies.

(21) Texas Lottery Commission--The appointive board or commission established in Chapter 467, Government Code.

(b) (No change.)

(c) Procurement method.

(1) For the purchase or lease of goods and services not expected to exceed \$5,000, or for the purchase or lease of goods and services available under a state contract, a competitive solicitation, whether formal or informal, may be conducted, but is not required.

(2) For the purchase or lease of goods and services not expected to exceed \$25,000, the agency, at a minimum, will conduct an informal competitive solicitation in an attempt to obtain at least three competitive bids and will solicit at least two HUB vendors.

(3) For the purchase or lease of goods and services expected to exceed \$25,000, the agency will conduct a formal competitive solicitation in an attempt to obtain at least three competitive bids or proposals and will solicit at least two HUB vendors.

(4) Printing services. For the purchase of printing services over \$2,500, [~~\$1,000,~~] the agency will submit print job specifications and bid requests to the State Print Shops. If no responsive bids are received from a State Print Shop or, after the results of the bid evaluation, the agency determines that best value would be achieved through a private sector vendor, the agency may perform a competitive solicitation outlined in paragraph (2) or (3) of this subsection.

(5) Emergency procurement. Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make an emergency purchase or lease of goods or services. Prior to making an emergency purchase or lease of goods or services, the existence of an emergency should be documented. For emergency purchases in excess of \$5,000, the agency may conduct an informal competitive solicitation in an attempt to obtain at least three competitive bids, whenever possible. For emergency purchases in excess of \$25,000, the procurement will be posted on the Electronic State Business Daily; however, the minimum posting requirements do not apply. Posting of the advertisement and/or the award notice satisfies this requirement. In response to an emergency, the agency may procure goods or services in the most expeditious manner deemed appropriate, including from a sole source. [~~Whenever possible, contacts will be made with multiple sources in order to receive as much competition as possible.~~]

(6) Proprietary purchase. When the agency believes that a purchase of goods or services over \$5,000 is proprietary to one vendor or one manufacturer, a written proprietary purchase justification will be included in the procurement file. If the estimated purchase price exceeds \$25,000, the procurement will be posted on the Electronic State Business Daily prior to a purchase order or contract being issued.

(7) Notwithstanding paragraphs (1) - (4) of this subsection, the agency may make a purchase or lease of goods or services under any other procedure not otherwise prohibited by law.

(d) (No change.)

(e) Formal competitive solicitations.

(1) A formal competitive solicitation is a process conducted in order to receive at least three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, RFQ, or another statewide contract process, respectively.

(A) An IFB will be used when the agency is able to describe, by way of established specifications, exactly what it wishes to procure, and wants bidders to offer such at a specific price.

(B) An RFP will be used when the agency knows generally what it wishes to procure in order to accomplish a certain goal(s) or objective(s); requirements cannot be completely and accurately described; requirements can be satisfied in a number of ways, all of which could be acceptable; or, where oral or written communications with proposers may be necessary in order to effectively communicate requirements and/or assess proposals, and the agency wants proposers to offer a solution(s) to address such need(s) at a specific price(s). The RFP process allows for negotiations between a proposer and the issuing agency.

(C) An RFQ will be used when the agency wants to procure professional services and evaluate proposers solely on their qualifications.

(2) The agency [~~Where appropriate, the agency~~] will advertise formal competitive solicitations, whether by IFB, RFP, or RFQ on the Electronic State Business Daily in accordance with the Comptroller of Public Accounts posting time requirements. The agency may advertise such solicitations in other media determined appropriate by the agency.

(3) For all formal competitive solicitations, the agency will award a contract to the most qualified bidder or proposer as determined during the evaluation of the bids or proposals. The agency may reject all bids or proposals if it is determined to be in the best interest of the agency. At the time a purchase order is issued or a contract is executed, the agency will notify, in writing, all other bidders or proposers of the contract award by facsimile, email or by certified mail. Any information relating to the solicitation not made privileged from disclosure by law will be made available for public disclosure, after award of a contract, pursuant to the Texas Public Information Act.

(4) For those formal competitive solicitations where fewer [less] than two [~~three~~] bids or proposals are received, the agency will document the reasons, if known, for the lack of two [~~three~~] bids or proposals. If fewer [less] than two [~~three~~] bids or proposals are received, the agency may cancel the solicitation and conduct another solicitation, or it may award a contract if one acceptable bid or proposal is received.

(5) For formal competitive solicitations where an IFB is used, the agency will award a contract to the qualified bidder submitting the lowest cost responsible bid meeting all specifications and providing the best value for the agency, as determined during the evaluation of the bids. Negotiations are not authorized when utilizing an IFB procurement method; however, if only one response is received, negotiations are allowed, provided, negotiations may not result in a material change to the advertised specifications.

(f) RFP.

(1) Submission. When an RFP is used by the agency, the RFP will contain, at a minimum, the following:

(A) a general description of the goods and/or services to be provided, and a specific identification of the goals or objectives to be achieved;

(B) a description of the format proposals must follow and the elements they must contain;

(C) the time and date proposals are due, and the location and person to whom they are to be submitted;

(D) an identification of the process to be utilized in evaluating proposals; and

(E) a listing of the factors to be utilized in evaluating proposals and awarding a contract. At a minimum, the factors should include:

(i) the proposer's price to provide the goods or services;

(ii) the probable quality of the offered goods or services;

(iii) the agency's evaluation of the likelihood of the proposal to produce the desired outcome for the agency, considering, among other criteria:

(I) the quality of the proposer's past performance in contracting with the agency, with other state entities, or with private sector entities;

(II) the qualifications of the proposer's personnel;

(III) the experience of the proposer in providing the requested goods or services;

(IV) the financial status of the proposer; and

(iv) whether the proposer performed the good faith effort required by the HUB subcontracting plan, when the agency has determined that subcontracting is probable.

(2) Evaluation Process. The agency will, prior to the deadline for receipt of proposals, develop and establish comprehensive evaluation criteria to be utilized by an evaluation committee in evaluating the proposals. All proposals that are responsive to the RFP will be reviewed by the evaluation committee. Part [~~As part~~] of the initial evaluation process may include an inspection trip to the proposer's facilities, and/or [] proposers may be requested to make an oral presentation to the committee[; ~~which may include an inspection trip to the proposer's facilities.~~] The evaluation committee may seek advice from consultants. If consultants are employed, they may be provided all information provided by the proposers. The evaluation committee will evaluate and score all proposals in accordance with the evaluation criteria.

(3) Best and Final Offers (BAFO). The agency may select top proposers, which may each be given an opportunity to discuss, clarify, and negotiate with the agency, and submit revisions to their respective proposals to the agency through a BAFO process. During discussions between the proposers and the agency, no information from a competing proposal may be revealed by the agency to another competitor. Any type of auction practice or allowing the transfer of technical information is specifically prohibited. At the conclusion of the discussions, BAFOs may be formally requested from the proposers and a deadline will be set for submission. BAFOs will be submitted by supplemental pages and not a complete resubmission of the proposal. All BAFOs will be reviewed by the evaluation committee. The evaluation committee will evaluate and score the BAFO response together with the original proposal in accordance with the evaluation criteria.

(4) Negotiation. If a BAFO process is not used, the agency will attempt to negotiate a contract with the selected proposer. If a contract cannot be negotiated with the selected proposer on terms the agency determines reasonable, negotiations with that proposer will be

terminated, and negotiations will be undertaken with the next highest scored proposer. This process will be continued until a contract is executed by a proposer and the agency, or negotiations with all qualified proposers are terminated. If no contract is executed, the agency may cancel the solicitation.

(5) Multiple Award. The agency may award a contract to two or more vendors or contractors using a single solicitation to furnish the same or similar supplies or services, where more than one vendor or contractor is needed to meet the agency's requirements for quantity, delivery, or service.

(g) - (i) (No change.)

§401.105. *Major Procurement Approval Authority, Responsibilities and Reporting.*

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

(c) Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Contract--A written agreement between the agency and a vendor for goods or services. [~~As used in this section, "contract" includes letters of agreement, interagency agreements with other government entities, and other documents in which state funds allocated to the agency are exchanged for the delivery of goods or services.~~]

(2) Formal Procurement--A formal competitive solicitation, for the purchase or lease of goods and/or services expected to exceed \$25,000, conducted in order to receive at least three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, RFQ, or another statewide contract process, respectively.

(3) Major Procurement--Any formal procurement for goods or services that directly supports the agency's core gaming business function and has a cumulative contract value equal to or greater than ten (10) million dollars.

(4) Major Contract--Any contract resulting from a Major Procurement.

(5) Prime Contract--Any contract, other than those contracts designated as Major Contracts, which has a cumulative contract value that exceeds one (1) million dollars.

(6) Value--The agency adopts by reference the determination of contract value set forth in the Texas Procurement and [State of Texas] Contract Management Guide published by the Comptroller of Public Accounts. The determination of contract value shall be the estimated dollar amount that the agency may be obligated to pay pursuant to the contract and all executed and proposed amendments, extensions and renewals of the contract. [~~based on the original term of the contract, including any renewal periods.~~] The agency shall base its determination of the proposed length of and compensation during the original term and the renewal periods of the contract on best business practices, state fiscal standards and applicable law, procedures and regulations.

(d) - (g) (No change.)

(h) Contract Planning.

(1) The executive director or his/her designee will present the status of all major and prime contracts to the Texas Lottery Commission annually for informational purposes. The report will be presented at the beginning of each fiscal year.

(2) As deemed necessary by the executive director or his/her designee, updates to the status of certain contracts may be provided to the Texas Lottery Commission periodically throughout the fiscal year for informational purposes.

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 February 8, 2019.

TRD-201900402

Bob Biard

General Counsel

Texas Lottery Commission

Earliest possible date of adoption: March 24, 2019

For further information, please call: (512) 344-5012



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER DD. INSTRUCTIONAL MATERIALS PORTAL

19 TAC §§66.1401, 66.1403, 66.1405, 66.1407

The Texas Education Agency (TEA) proposes new §§66.1401, 66.1403, 66.1405, and 66.1407, concerning the instructional materials web portal. The new sections would implement House Bill (HB) 3526 and Senate Bill (SB) 810, 85th Texas Legislature, Regular Session, 2017, by specifying procedures by which publishers submit instructional materials for inclusion in the instructional materials web portal.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, added Texas Education Code (TEC), §31.081, to require the commissioner to develop and maintain an instructional materials web portal to assist school districts and open-enrollment charter schools in selecting instructional materials. HB 3526 and SB 810 also added TEC, §31.082, which requires an analysis of instructional materials submitted by publishers for inclusion in the web portal, and TEC, §31.083, which requires that the web portal include a repository of open educational resources that school districts and open-enrollment charter schools can access at no cost.

The proposed new rules would implement HB 3526 and SB 810 by establishing the instructional materials portal, which is designed to promulgate the use of high-quality materials by providing school districts and open-enrollment charter schools access to free, transparent, and user-friendly information. A pilot phase will take place during the spring of 2019, involving a select number of Texas school districts and publishers who have volunteered to participate. The information about instructional materials generated during the pilot will be distributed only to pilot participants.

Proposed new §66.1401, Definitions, would define terms having meanings specific to proposed new Chapter 66, Subchapter DD.

Proposed new §66.1403, Instructional Materials to be Included in the Instructional Materials Portal, would describe the instruc-

tional materials that will be included in the instructional materials portal and specify the considerations TEA will use in determining the sequence and scheduling of quality reviews. This provision would enable TEA to cost-effectively manage agency resources and state funds and thereby provide maximum value to school districts and open-enrollment charter schools. The proposed new rule would also specify, in accordance with TEC, §31.082, that instructional materials submitted for quality review may be evaluated to determine the extent to which the materials cover the essential knowledge and skills identified under TEC, §28.002, for the subject and grade level for which the material is intended to be used. The process by which instructional materials are evaluated regarding the extent to which they cover the essential knowledge and skills is conducted under the authority of TEC, §31.023, and State Board of Education rules in 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials.

Proposed new §66.1405, Procedures for Publishers to Submit Instructional Materials for Inclusion in the Instructional Materials Portal, would establish the procedures publishers must use to submit materials for inclusion in the instructional materials portal and detail the quality review process. In accordance with TEC, §31.082, each instructional material submitted by a publisher for inclusion in the instructional materials portal must undergo an independent analysis by a private entity contracted by TEA. The proposed new rule would inform publishers of the requirements for submission, enabling them to plan and allocate resources appropriately. The proposed new rule would also specify when TEA may not include instructional materials in the quality evaluation process, which allows TEA discretion in the selection and timing of materials to be reviewed to make efficient use of agency resources.

Proposed new §66.1407, Procedures for Open Education Resource Licensors to Submit Materials for Inclusion in the Open Education Resource Repository, would establish the requirements for publishers and open education resource (OER) licensors to submit instructional materials for inclusion in the OER repository, enabling them to plan and allocate resources appropriately. The proposed new rule would also specify when TEA may not include OERs in the quality evaluation process, which allows TEA discretion in the selection and timing of materials to be reviewed to make efficient use of agency resources.

FISCAL IMPACT: Martin Winchester, deputy commissioner for educator and systems support, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal beyond what statute requires. TEC, §31.081, requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials and requires that the commissioner use money in the state technology and instructional materials fund to pay any expenses associated with the web portal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would create a new regulation by providing foundational procedures for the submission of instructional materials as required by TEC, §31.081. The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Winchester has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that school districts and open-enrollment charter schools are well informed regarding the quality of instructional materials, enabling them to choose materials that best serve their needs and improve outcomes for their students. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 22, 2019, and ends March 25, 2019. A public hearing to solicit testimony and input on the proposal will be held at 8:30 a.m. on March 21, 2019, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at the hearing must sign in between 8:15 a.m. and 9:00 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §31.023, which requires the State Board of Education to determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted to be included on the list of adopted instructional materials; TEC, §31.081, as added by House Bill (HB) 3526 and Senate Bill (SB) 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials; TEC, §31.081(c), which requires the commissioner to adopt rules to establish the procedure by which a publisher may submit instructional materials for inclusion in the web portal; TEC, §31.082, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to contract with a private entity to con-

duct an independent analysis of each instructional material submitted by a publisher for inclusion in the web portal developed under TEC, §31.081; TEC, §31.083, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to include in the web portal developed under TEC, §31.081, a repository of open educational resources and other electronic instructional materials that school districts and open-enrollment charter schools may access at no cost; and TEC, §31.084, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which authorizes the commissioner to adopt rules as necessary to implement the provisions of TEC, Chapter 31, Subchapter B-2.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §31.023; and §§31.081, 31.082, 31.083, and 31.084, as added by House Bill 3526 and Senate Bill 810, 85th Texas Legislature, Regular Session, 2017.

§66.1401. Definitions.

For purposes of this subchapter, the following words and terms shall have the following meanings.

(1) Classroom set--This term refers to the components of an instructional material, including, but not limited to, the Texas Essential Knowledge and Skills-bearing components sufficient for use by a teacher and 25 students.

(2) Inclusion--This term means the presentation or display of instructional materials, open education resources (OERs), and related information in the instructional materials portal or on other websites where information is publicly available to which the instructional materials portal links.

(3) Instructional materials--This term has the meaning assigned by Texas Education Code (TEC), §31.002(1), and §66.27(a) of this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials).

(4) Open education resource--This term has the meaning assigned by TEC, §31.002(1-a) and §31.083.

(5) Open education resource submission form--This term refers to a document generated and approved by the Texas Education Agency (TEA) on which an OER licensor, a publisher, or TEA records information required for submission of OERs to the repository.

(6) Open education resource submission process--This term refers to the procedures followed by an OER licensor, a publisher, or TEA when submitting OERs to the OER repository in the instructional materials portal.

(7) OER licensor--This term means the individual or entity that offers an OER under the terms of an intellectual property license as specified in TEC, §31.083. Publishers and TEA may be OER licensors.

(8) Professional development services--This term means the training and instruction provided by a publisher or its designee for the purpose of teaching teachers and other educators how to use the publisher's instructional materials.

(9) Publisher--This term means the developer or distributor of instructional materials and has the meaning assigned by TEC, §31.002(2).

(10) Evaluation of quality--This term refers to the independent analysis of instructional materials based on their quality and assignment of a quality rating to the materials for publication in the instructional materials portal.

(11) Evaluation of quality submission form--This term refers to a document generated and approved by TEA in which

publishers record information required for submission of instructional materials for an evaluation of quality (EoQ).

(12) Evaluation of quality submission process--This term refers to the procedures followed by publishers when submitting instructional materials for an EoQ.

§66.1403. Instructional Materials to be Included in the Instructional Materials Portal.

(a) The following instructional materials shall be included in the instructional materials web portal:

(1) instructional materials included in the list of instructional materials adopted by the State Board of Education (SBOE), as specified in Texas Education Code, §31.023. Instructional materials adopted by the SBOE are not included in the evaluation of quality (EoQ) process unless:

(A) a publisher submits instructional materials through the EoQ submission process;

(B) a member of the SBOE makes a written request that an instructional material be included in an EoQ; or

(C) more than 10% of local education agencies statewide request that an instructional material be included in an EoQ;

(2) instructional materials submitted directly to the Texas Education Agency (TEA) by a publisher through the EoQ submission process;

(3) instructional materials submitted by TEA or open education resources (OERs) submitted by TEA; and

(4) OERs submitted directly to TEA through the OER submission process for inclusion in the OER repository. OER materials are not included in the repository unless:

(A) a publisher or other OER licensor submits such materials through the EoQ submission process; or

(B) TEA submits such materials for which TEA is the OER licensor for the purposes of being reviewed for quality.

(b) TEA may determine the sequence and scheduling of quality reviews based on the following considerations:

(1) the availability and allocation of resources for completion of quality reviews;

(2) the needs of public schools in Texas;

(3) the timing of submission to TEA; and

(4) other factors deemed relevant by TEA to maximize the effectiveness of the quality review process.

(c) Instructional materials that have been submitted for an EoQ may be reviewed for alignment with the Texas Essential Knowledge and Skills and, when applicable, the English Language Proficiency Standards. TEA may choose to conduct such reviews according to the process established by the SBOE.

(d) TEA may exclude from the quality review process a submission that does not constitute an instructional material.

§66.1405. Procedures for Publishers to Submit Instructional Materials for Inclusion in the Instructional Materials Portal.

(a) A publisher that submits instructional materials for an evaluation of quality (EoQ) shall:

(1) submit a completed Texas Education Agency (TEA)-generated EoQ submission form by the deadline stated in the submis-

sion form. TEA may adapt the submission form, as it deems necessary, to develop and maintain the instructional materials web portal;

(2) sign a set of assurances at the time of submission assuring compliance with the requirements listed in this subchapter;

(3) submit instructional materials that are:

(A) in electronic format;

(B) complete and include all content to be used in the final product; and

(C) fully functional for review purposes;

(4) ensure submitted instructional materials remain final and unchanged throughout the quality review process, unless otherwise specified by TEA;

(5) make submitted instructional materials available for reviewers for the duration of a review period to be determined by TEA and made known to publishers;

(6) include information required for reviewers to complete electronic reviews of instructional materials, including, but not limited to:

(A) hardware and system requirements for the review of any item included in an instructional material submission; and

(B) information for online products, including internet location, keycodes, passwords, and other login information required to ensure access to the materials being reviewed throughout the review period;

(7) provide specialized computer hardware or other equipment necessary to review all items included in a student or teacher component of an instructional material for the duration of the review period in a quantity to be determined by TEA and communicated to the publisher at the time the materials are submitted for review;

(8) provide the following information in a format determined by TEA and communicated to publishers by way of the EoQ submission form regarding the instructional materials submitted:

(A) computer hardware and system requirements for use of the materials;

(B) availability and description of professional development services;

(C) a report for each electronic component that verifies that the component complies with §66.28(a)(2) of this title (relating to Requirements for Publisher Participation), which can be satisfied by a report prepared for submission to the SBOE; and

(D) a complete description of all student and teacher components;

(9) provide accurate and up-to-date pricing information for each instructional material, including:

(A) the price for a single copy of or individual access to, in the case of online materials, each item included in an instructional material;

(B) a list of the components of an instructional material that comprise a classroom set and the price for such classroom set;

(C) the price for replacement of consumable materials for a period up to 12 years; and

(D) the price for subscriptions to online materials for the first year of the purchase agreement and for each subsequent year up to 12 years;

(10) make samples of instructional materials available for public review during a review period determined by TEA, as deemed necessary by TEA and made known to publishers by TEA;

(11) assume responsibility for all expenses incurred by participation in the review process, as TEA does not guarantee return of sample instructional materials;

(12) acknowledge that TEA and its designee have final authority for determining all quality ratings;

(13) provide evidence in the form of an identification number provided by the Texas Secretary of State proving that the publisher is approved to conduct business in the state of Texas;

(14) verify that the publisher is the copyright owner of the instructional materials; and

(15) verify that the individual submitting the materials is legally authorized to act on behalf of the publisher.

(b) TEA may not include materials in the quality evaluation process if:

(1) materials have been authored or contributed to by a current employee of TEA or its designated independent evaluator, unless those materials are open education resources;

(2) publishers directly or indirectly contact reviewers before or during the review process if such contact or solicitation relates to the quality evaluation process; or

(3) reviewers lack capacity to evaluate all submitted materials.

(c) Publishers that submit materials for quality evaluation may not withdraw those materials from the review process after the materials have been approved for review by TEA.

(d) This section does not apply to or otherwise limit the submission of instructional materials by TEA for inclusion in the instructional materials portal.

§66.1407. Procedures for Open Education Resource Licensors to Submit Materials for Inclusion in the Open Education Resource Repository.

(a) An open education resource (OER) licensor that submits OERs for inclusion in the OER repository shall:

(1) submit a completed Texas Education Agency (TEA)-generated OER submission form, which TEA may adapt, as it deems necessary, to develop and maintain the instructional materials web portal;

(2) sign a set of assurances at the time of submission assuring compliance with the requirements in this subchapter;

(3) submit instructional materials that:

(A) are in electronic format; and

(B) meet TEA requirements to be included in the repository;

(4) provide the following information in a format determined by TEA and communicated to the OER licensor by way of the OER submission form regarding the OERs submitted:

(A) computer hardware and system requirements for use of materials;

(B) availability of professional development services in a format requested by TEA;

(C) a report for each electronic component that verifies that the component complies with §66.28(a)(2) of this title (relating to Requirements for Publisher Participation);

(D) a complete description of all student and teacher components; and

(E) access information for web-based products, including internet location, login, and password information;

(5) assume responsibility for all expenses incurred by submitting materials to the repository;

(6) provide evidence that materials meet the OER definition; and

(7) verify that the individual submitting the materials is the OER licensor or is legally authorized to act on behalf of the OER licensor.

(b) If any of the requirements specified in subsection (a) of this section are not met, TEA may choose not to include those OERs in the repository until all requirements are met.

(c) TEA may not include OERs in the quality evaluation process if reviewers do not have capacity to conduct quality evaluations for all submitted materials.

(d) OER licensors that update materials in the OER repository must resubmit an OER submission form.

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 February 11, 2019.

TRD-201900413

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 24, 2019

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



CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER B. GRADUATION REQUIREMENTS

19 TAC §74.12, §74.13

The State Board of Education (SBOE) proposes amendments to §74.12 and §74.13, concerning graduation requirements. The proposed amendments would align with recent changes to the Texas Essential Knowledge and Skills (TEKS) for fine arts and establish courses to be included in a cybersecurity pathway for the science, technology, engineering, and mathematics (STEM) endorsement.

BACKGROUND INFORMATION AND JUSTIFICATION: The 83rd Texas Legislature, Regular Session, 2013, passed House Bill (HB) 5, amending Texas Education Code (TEC), §28.025, to transition from three high school graduation programs to one foundation high school program with endorsement options to increase flexibility for students. HB 5 gave the SBOE the authority to identify advanced courses related to the new grad-

uation program, identify the curriculum requirements for the endorsements, and determine the requirements for performance acknowledgments related to the new graduation program.

The 85th Texas Legislature, Regular Session, 2017, passed HB 3593, amending TEC, §28.025(c-1)(1), to add cybersecurity and computer coding to the courses to be included in a STEM endorsement. HB 3593 also added TEC, §28.025(c-10), to require the SBOE to adopt or select five technology applications courses to be included in a cybersecurity pathway for the STEM endorsement. In August 2018, a committee of secondary and postsecondary educators and business and industry representatives were selected to develop recommendations for TEKS for new cybersecurity courses and for the cybersecurity pathway. The committee met again in October 2018 and January 2019 to finalize their recommendations.

For students to earn state credit toward specific graduation requirements, a course must be approved by the SBOE and included in SBOE rule. At the September 2017 SBOE meeting, the committee discussed International Baccalaureate (IB) courses that are not currently included in SBOE rule and considerations regarding the appropriate amount of state credit that should be awarded for IB courses. At that time, the board requested that agency staff prepare rule text to address these issues. Throughout 2018, the SBOE adopted rules to align the TEKS with current course offerings by the International Baccalaureate Organization. In September 2018, the SBOE discussed the addition of two currently approved innovative courses, IB Film Standard Level and IB Film Higher Level, to the TEKS for fine arts, and in November 2018, the SBOE approved for first reading and filing authorization the proposal to add the two new courses.

The proposed amendment to §74.12, Foundation High School Program, would add IB Film Standard or Higher Level to the list of courses that would satisfy a fine arts credit. Language would also be added to clarify that the third and fourth English credits may consist of a comparable IB course that meets the TEKS for English III or IV, respectively. In addition, technical corrections would be made.

The proposed amendment to §74.13, Endorsements, would establish course options for a cybersecurity pathway for the STEM endorsement.

The SBOE approved the amendments for first reading and filing authorization at its February 1, 2019 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be added flexibility in course options for students to meet high school graduation requirements. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 22, 2019, and ends March 29, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2019 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 22, 2019.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(f)(2), which requires the SBOE to approve courses in cybersecurity for credit for high school graduation; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school program that are consistent with the required curriculum under TEC, §28.002, and to designate the specific courses in the foundation curriculum that are required under the foundation high school program; TEC, §28.025(b-1), which re-

quires the SBOE to by rule require that the curriculum requirements for the foundation high school program include a requirement that students successfully complete four credits in English language arts, including one credit in English I, one credit in English II, one credit in English III, and one credit in an advanced English course; three credits in mathematics, including one credit in Algebra I, one credit in geometry, and one credit in any advanced mathematics course; three credits in science, including one credit in biology, one credit in any advanced science course, and one credit in integrated physics and chemistry or in an additional advanced science course; three credits in social studies, including one credit in United States history, at least one-half credit in government and at least one-half credit in economics, and one credit in world geography or world history; two credits in the same language in a language other than English; five elective credits; one credit in fine arts; and one credit in physical education; TEC, §28.025(c-1), which requires the SBOE to by rule provide students with multiple options for earning each endorsement, including, to the greatest extent possible, coherent sequences of courses. The SBOE by rule must permit a student to enroll in courses under more than one endorsement curriculum before the student's junior year; TEC, §28.025(c-1)(1), which establishes that an endorsement may be earned in science, technology, engineering, and mathematics (STEM), which includes courses related to science, including environmental science; technology, including computer science, cybersecurity, and computer coding; engineering; and advanced mathematics; TEC, §28.025(c-2), which requires the SBOE, in adopting rules, to require a student in order to earn any endorsement to successfully complete four credits in mathematics, which must include Algebra I, geometry, and two advanced mathematics courses; four credits in science, which must include biology, integrated physics and chemistry or an additional advanced science course, and two advanced science courses or an advanced career and technology course; and two additional elective credits. The SBOE, in adopting rules, is also required to develop additional curriculum requirements for each endorsement with the direct participation of educators and business, labor, and industry representatives and to require each school district to report to the agency the categories of endorsements for which the district offers all courses for curriculum requirements, as determined by board rule; and TEC, §28.025(c-10), which requires the SBOE to adopt or select five technology applications courses on cybersecurity to be included in a cybersecurity pathway for the STEM endorsement.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§74.12. *Foundation High School Program.*

(a) (No change.)

(b) Core courses. A student must demonstrate proficiency in the following.

(1) English language arts--four credits. Two of the credits must consist of English I and II. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.) A third credit must consist of English III, [or] a comparable Advanced Placement (AP) [or International Baccalaureate (IB)] English language arts course that does not count toward another credit required for graduation, or a comparable International Baccalaureate

reate (IB) English language arts course that meets all the requirements in §110.33 of this title (relating to English Language Arts and Reading, English III (One Credit), Beginning with School Year 2009-2010). A fourth credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (A) English IV;
- (B) Independent Study in English;
- (C) Literary Genres;
- (D) Creative Writing;
- (E) Research and Technical Writing;
- (F) Humanities;
- (G) Public Speaking III;
- (H) Communication Applications, which must be combined with another half credit from the other courses listed in subparagraphs (A)-(G) and (I)-(S) of this paragraph;
- (I) Oral Interpretation III;
- (J) Debate III;
- (K) Independent Study in Speech;
- (L) Independent Study in Journalism;
- (M) Advanced Broadcast Journalism III;
- (N) Advanced Journalism: Newspaper III;
- (O) Advanced Journalism: Yearbook III;
- (P) a comparable Advanced Placement (AP) [~~or International Baccalaureate (IB)~~] English language arts course that does not count toward another credit required for graduation;

(Q) a comparable International Baccalaureate (IB) English language arts course that meets all the requirements in §110.34 of this title (relating to English Language Arts and Reading, English IV (One Credit), Beginning with School Year 2009-2010);

(R) [(Q)] after the successful completion of English I, II, and III, a locally developed English language arts course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the Texas Education Code (TEC), §28.002(g-1);

(S) [(R)] Business English; and

(T) [(S)] a college preparatory English language arts course that is developed pursuant to the TEC, §28.014.

(2) Mathematics--three credits. Two of the credits must consist of Algebra I and Geometry.

(A) The additional credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses or a credit selected from the courses listed in subparagraph (B) of this paragraph:

- (i) Mathematical Models with Applications;
- (ii) Mathematical Applications in Agriculture, Food, and Natural Resources;
- (iii) Digital Electronics;
- (iv) Robotics Programming and Design;
- (v) Financial Mathematics;

- (vi) Applied Mathematics for Technical Professionals;
- (vii) Accounting II;
- (viii) Manufacturing Engineering Technology II;
- and
- (ix) Robotics II.

(B) The additional credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (i) Algebra II;
- (ii) Precalculus;
- (iii) Advanced Quantitative Reasoning;
- (iv) Independent Study in Mathematics;
- (v) Discrete Mathematics for Problem Solving;
- (vi) Algebraic Reasoning;
- (vii) Statistics;
- (viii) a comparable AP or IB mathematics course that does not count toward another credit required for graduation;
- (ix) AP Computer Science A;
- (x) IB Computer Science Higher Level;
- (xi) Engineering Mathematics;
- (xii) Statistics and Business Decision Making;
- (xiii) Mathematics for Medical Professionals;
- (xiv) Discrete Mathematics for Computer Science;
- (xv) pursuant to the TEC, §28.025(b-5), after the successful completion of Algebra II, a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses offered under this clause [subparagraph]; and

(xvi) after the successful completion of Algebra I and Geometry, a locally developed mathematics course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1).

(C) A single two-credit IB mathematics course may only satisfy one mathematics requirement.

(3) Science--three credits. One credit must consist of Biology or a comparable AP or IB biology course.

(A) One credit must be selected from the following laboratory-based courses:

- (i) Integrated Physics and Chemistry;
- (ii) Chemistry;
- (iii) Physics;
- (iv) Principles of Technology; and
- (v) a comparable AP or IB chemistry or physics course that does not count toward another credit required for graduation.

(B) The additional credit may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following laboratory-based courses:

- (i) Chemistry;
- (ii) Physics;
- (iii) Aquatic Science;
- (iv) Astronomy;
- (v) Earth and Space Science;
- (vi) Environmental Systems;
- (vii) a comparable AP or IB science course that does not count toward another credit required for graduation;
- (viii) Advanced Animal Science;
- (ix) Advanced Plant and Soil Science;
- (x) Anatomy and Physiology;
- (xi) Medical Microbiology;
- (xii) Pathophysiology;
- (xiii) Food Science;
- (xiv) Forensic Science;
- (xv) Biotechnology I;
- (xvi) Biotechnology II;
- (xvii) Principles of Technology;
- (xviii) Scientific Research and Design;
- (xix) Engineering Design and Problem Solving;
- (xx) Engineering Science;

(xxi) pursuant to the TEC, §28.025(b-5), after the successful completion of physics, a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses offered under this clause; and

(xxii) a locally developed science course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1).

(C) Credit may not be earned for both physics and Principles of Technology to satisfy science credit requirements.

(D) A single two-credit IB science course may only satisfy one science requirement.

(4) Social studies--three credits. Two of the credits must consist of United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit). The additional credit may be selected from the following courses:

- (A) World History Studies; or [and]
- (B) World Geography Studies; or [and]

(C) a comparable AP or IB world history or world geography course that does not count toward another credit required for graduation.

- (5) Languages other than English (LOTE)--two credits.

(A) The credits may be selected from the following:

(i) any two levels in the same language, including comparable AP or IB language courses that do not count toward another credit required for graduation; or

(ii) two credits in computer programming languages, including computer coding, to be selected from Computer Science I, II, and III, AP Computer Science Principles, AP Computer Science A, IB Computer Science Standard Level, and IB Computer Science Higher Level.

(B) A single two-credit IB LOTE course may only satisfy one LOTE requirement.

(C) If a student, in completing the first credit of LOTE, demonstrates that the student is unlikely to be able to complete the second credit, the student may substitute another appropriate course as follows:

(i) Special Topics in Language and Culture;

(ii) World History Studies or World Geography Studies for a student who is not required to complete both by the local district;

(iii) another credit selected from Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English); or

(iv) computer programming languages, including computer coding.

(D) The determination regarding a student's ability to complete the second credit of LOTE must be agreed to by:

(i) the teacher of the first LOTE credit course or another LOTE teacher designated by the school district, the principal or designee, and the student's parent or person standing in parental relation;

(ii) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the TEC, Chapter 29, Subchapter A; or

(iii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, Section 794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973.

(E) A student, who due to a disability, is unable to complete two credits in the same language in a language other than English, may substitute a combination of two credits that are not being used to satisfy another specific graduation requirement selected from English language arts, mathematics, science, or social studies or two credits in career and technical education or technology applications for the LOTE credit requirements. The determination regarding a student's ability to complete the LOTE credit requirements will be made by:

(i) the student's ARD committee if the student receives special education services under the TEC, Chapter 29, Subchapter A; or

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, Section 794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973.

(F) A student who successfully completes a dual language immersion/two-way or dual language immersion/one-way pro-

gram in accordance with §89.1210(d)(3) and (4) of this title (relating to Program Content and Design), §89.1227 of this title (relating to Minimum Requirements for Dual Language Immersion Program Model), and §89.1228 of this title (relating to Two-Way Dual Language Immersion Program Model Implementation) at an elementary school may satisfy one credit of the two credits required in a language other than English.

(i) To successfully complete a dual language immersion program, a student must:

(I) have participated in a dual language immersion program for at least five consecutive school years;

(II) achieve high levels of academic competence as demonstrated by performance of meets or masters grade level on the State of Texas Assessments of Academic Readiness (STAAR®) in English or Spanish, as applicable; and

(III) achieve proficiency in both English and a language other than English as demonstrated by scores of proficient or higher in the reading and speaking domains on language proficiency or achievement tests in both languages.

(ii) The second credit of a language other than English must be in the same language as the successfully completed dual language immersion program.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

(i) Foundations of Personal Fitness;

(ii) Adventure/Outdoor Education;

(iii) Aerobic Activities; and

(iv) Team or Individual Sports.

(B) In accordance with local district policy, the required credit may be earned through completion of any Texas essential knowledge and skills-based course that meets the requirement in subparagraph (E) of this paragraph for 100 minutes of moderate to vigorous physical activity per five-day school week and that is not being used to satisfy another specific graduation requirement.

(C) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

(i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(D) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

(i) Drill Team;

(ii) Marching Band; and

(iii) Cheerleading.

(E) All substitution activities allowed in subparagraphs (B)-(D) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(F) Credit may not be earned more than once for any course identified in subparagraph (A) of this paragraph. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B)-(D) of this paragraph.

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) or a course that is offered for credit as provided by the TEC, §28.002(g-1), for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's ARD committee if the student receives special education services under the TEC, Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, Section 794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Fine arts--one credit.

(A) The credit may be selected from the following courses subject to prerequisite requirements:

(i) Art, Level I, II, III, or IV;

(ii) Dance, Level I, II, III, or IV;

(iii) Music, Level I, II, III, or IV;

(iv) Music Studies;

(v) Theatre, Level I, II, III, or IV;

(vi) Musical Theatre, Level I, II, III, or IV;

(vii) Technical Theatre, Level I, II, III, or IV;

(viii) IB Film Standard or Higher Level;

(ix) [~~(viii)~~] Floral Design;

(x) [~~(ix)~~] Digital Art and Animation; and

(xi) [(x)] 3-D Modeling and Animation.

(B) In accordance with local district policy, credit may be earned through participation in a community-based fine arts program not provided by the school district in which the student is enrolled. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in fine arts. Approval may be granted if the fine arts program provides instruction in the essential knowledge and skills identified for a fine arts course as defined by Chapter 117, Subchapter C, of this title (relating to High School, Adopted 2013).

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

§74.13. Endorsements.

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

(e) To earn an endorsement a student must demonstrate proficiency in the following.

(1) The curriculum requirements for the Foundation High School Program as defined by §74.12 of this title (relating to Foundation High School Program).

(2) A fourth credit in mathematics that may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (A) Algebra II;
- (B) Precalculus;
- (C) Advanced Quantitative Reasoning;
- (D) Independent Study in Mathematics;
- (E) Discrete Mathematics for Problem Solving;
- (F) Algebraic Reasoning;
- (G) Statistics;
- (H) a comparable Advanced Placement (AP) or International Baccalaureate (IB) mathematics course that does not count toward another credit required for graduation;
- (I) AP Computer Science A;
- (J) IB Computer Science Higher Level;
- (K) Engineering Mathematics;
- (L) Statistics and Business Decision Making;
- (M) Mathematics for Medical Professionals;
- (N) Discrete Mathematics for Computer Science;

(O) pursuant to the Texas Education Code (TEC), §28.025(b-5), after the successful completion of Algebra II, a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses offered under this subparagraph; and

(P) after the successful completion of Algebra I and Geometry, a locally developed mathematics course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1).

(3) A student may complete a course listed in paragraph (2) of this subsection before or after completing a course listed in §74.12(b)(2)(A) of this title.

(4) The fourth mathematics credit may be a college preparatory mathematics course that is developed and offered pursuant to the TEC, §28.014.

(5) A single two-credit IB mathematics course may only satisfy one mathematics requirement.

(6) An additional credit in science that may be selected from one full credit or a combination of two half credits from two different courses, subject to prerequisite requirements, from the following courses:

- (A) Chemistry;
- (B) Physics;
- (C) Aquatic Science;
- (D) Astronomy;
- (E) Earth and Space Science;
- (F) Environmental Systems;
- (G) a comparable AP or IB science course that does not count toward another credit required for graduation;
- (H) Advanced Animal Science;
- (I) Advanced Plant and Soil Science;
- (J) Anatomy and Physiology;
- (K) Medical Microbiology;
- (L) Pathophysiology;
- (M) Food Science;
- (N) Forensic Science;
- (O) Biotechnology I;
- (P) Biotechnology II;
- (Q) Principles of Technology;
- (R) Scientific Research and Design;
- (S) Engineering Design and Problem Solving;
- (T) Engineering Science;
- (U) pursuant to the TEC, §28.025(b-5), after the successful completion of physics, a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses offered under this subparagraph;
- (V) a locally developed science course or other activity, including an apprenticeship or training hours needed to obtain an industry-recognized credential or certificate that is developed pursuant to the TEC, §28.002(g-1);

(W) pursuant to the TEC, §28.025(c-3), a student pursuing an arts and humanities endorsement who has the written permission of the student's parent or a person standing in parental relation to the student may substitute a course that is not being used to satisfy another specific graduation requirement selected from:

- (i) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading);
- (ii) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies) or Chapter 118 of this title (relating to Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits);

(iii) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English); or

(iv) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts); and

(X) credit may not be earned for both physics and Principles of Technology to satisfy science credit requirements.

(Y) A single two-credit IB science course may only satisfy one science requirement.

(7) Two additional elective credits that may be selected from the list of courses specified in §74.11(g) or (h) of this title (relating to High School Graduation Requirements).

(f) A student may earn any of the following endorsements.

(1) Science, technology, engineering, and mathematics (STEM). A student may earn a STEM endorsement by completing the requirements specified in subsection (e) of this section, including Algebra II, chemistry, and physics or Principles of Technology and:

(A) a coherent sequence of courses for four or more credits in career and technical education (CTE) that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title (relating to Texas Essential Knowledge and Skills for Career and Technical Education), Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Development), or CTE innovative courses approved by the commissioner of education. The final course in the sequence must be selected from Chapter 130, Subchapter O, of this title (relating to Science, Technology, Engineering, and Mathematics) or Career Preparation I or II and Project-Based Research in Chapter 127, Subchapter B, of this title (relating to High School), if the course addresses a STEM-related field; or

(B) a coherent sequence of four credits in computer science selected from the following:

- (i) Fundamentals of Computer Science; or
- (ii) Computer Science I; or
- (iii) Computer Science II; or
- (iv) Computer Science III; or
- (v) Digital Forensics; or
- (vi) Discrete Mathematics for Computer Science; or
- (vii) Game Programming and Design; or
- (viii) Mobile Application Development; or
- (ix) Robotics Programming and Design; or
- (x) Independent Studies in Technology Applications; or
- (xi) AP Computer Science A; or
- (xii) AP Computer Science Principles; or
- (xiii) IB Computer Science, Standard Level; or
- (xiv) IB Computer Science, Higher Level; or

(C) three credits in mathematics by successfully completing Algebra II and two additional mathematics courses for which Algebra II is a prerequisite by selecting courses from subsection (e)(2) of this section; or

(D) four credits in science by successfully completing chemistry, physics, and two additional science courses by selecting courses from subsection (e)(6) [(e)(5)] of this section; or

(E) a coherent sequence of four courses in cybersecurity to consist of Foundations in Cybersecurity and Cybersecurity Capstone and two additional courses to be selected from the following:

- (i) AP Computer Science A; or
- (ii) Computer Science I; or
- (iii) AP Computer Science Principles; or
- (iv) Digital Forensics; or
- (v) Computer Maintenance; or
- (vi) Internetworking Technologies I; or
- (vii) Internetworking Technologies II; or
- (viii) Networking; or

(E) [(E)] in addition to Algebra II, chemistry, and physics, a coherent sequence of three additional credits from no more than two of the categories or disciplines represented by subparagraphs (A), (B), (C), and (D) of this paragraph.

(2) Business and industry. A student may earn a business and industry endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses approved by the commissioner. The final course in the sequence must be selected from one of the following:

- (i) Chapter 130, Subchapter A, of this title (relating to Agriculture, Food, and Natural Resources); or
- (ii) Chapter 130, Subchapter B, of this title (relating to Architecture and Construction); or
- (iii) Chapter 130, Subchapter C, of this title (relating to Arts, Audio/Video Technology, and Communications); or
- (iv) Chapter 130, Subchapter D, of this title (relating to Business Management and Administration); or
- (v) Chapter 130, Subchapter F, of this title (relating to Finance); or
- (vi) Chapter 130, Subchapter I, of this title (relating to Hospitality and Tourism); or
- (vii) Chapter 130, Subchapter K, of this title (relating to Information Technology); or
- (viii) Chapter 130, Subchapter M, of this title (relating to Manufacturing); or
- (ix) Chapter 130, Subchapter N, of this title (relating to Marketing); or
- (x) Chapter 130, Subchapter P, of this title (relating to Transportation, Distribution, and Logistics); or
- (xi) Career Preparation I or II and Project-Based Research in Chapter 127, Subchapter B, of this title if the course addresses a career from a field listed in clauses (i)-(x) of this subparagraph; or

(B) four English credits by selecting courses from Chapter 110 of this title to include three levels in one of the following areas:

- (i) public speaking; or
- (ii) debate; or
- (iii) advanced broadcast journalism; or
- (iv) advanced journalism: newspaper; or
- (v) advanced journalism: yearbook; or
- (vi) advanced journalism: literary magazine; or

(C) four technology applications credits by selecting from the following:

- (i) Digital Design and Media Production; or
- (ii) Digital Art and Animation; or
- (iii) 3-D Modeling and Animation; or
- (iv) Digital Communications in the 21st Century; or
- (v) Digital Video and Audio Design; or
- (vi) Web Communications; or
- (vii) Web Design; or
- (viii) Web Game Development; or
- (ix) Independent Study in Evolving/Emerging Technologies; or

(D) a coherent sequence of four credits from subparagraph (A), (B), or (C) of this paragraph.

(3) Public services. A student may earn a public services endorsement by completing the requirements specified in subsection (e) of this section and:

(A) a coherent sequence of courses for four or more credits in CTE that consists of at least two courses in the same career cluster and at least one advanced CTE course. The courses may be selected from Chapter 130 of this title, Chapter 127 of this title, or CTE innovative courses approved by the commissioner. The final course in the sequence must be selected from one of the following:

- (i) Chapter 130, Subchapter E, of this title (relating to Education and Training); or
- (ii) Chapter 130, Subchapter G, of this title (relating to Government and Public Administration); or
- (iii) Chapter 130, Subchapter H, of this title (relating to Health Science); or
- (iv) Chapter 130, Subchapter J, of this title (relating to Human Services); or
- (v) Chapter 130, Subchapter L, of this title (relating to Law, Public Safety, Corrections, and Security); or
- (vi) Career Preparation I or II and Project-Based Research in Chapter 127, Subchapter B, of this title if the course addresses a field from a cluster listed in clauses (i)-(v) of this subparagraph; or

(B) four courses in Junior Reserve Officer Training Corps (JROTC).

(4) Arts and humanities. A student may earn an arts and humanities endorsement by completing the requirements specified in subsection (e) of this section and:

(A) five social studies credits by selecting courses from Chapter 113 of this title or Chapter 118 of this title (relating to Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits); or

(B) four levels of the same language in a language other than English by selecting courses in accordance with Chapter 114 of this title, which may include Advanced Language for Career Applications; or

(C) two levels of the same language in a language other than English and two levels of a different language in a language other than English by selecting courses in accordance with Chapter 114 of this title; or

(D) four levels of American sign language by selecting courses in accordance with Chapter 114 of this title; or

(E) a coherent sequence of four credits by selecting courses from one or two categories or disciplines in fine arts from Chapter 117 of this title or innovative courses approved by the commissioner; or

(F) four English credits by selecting from the following:

- (i) English IV; or
- (ii) Independent Study in English; or
- (iii) Literary Genres; or
- (iv) Creative Writing; or
- (v) Research and Technical Writing; or
- (vi) Humanities; or
- (vii) Communication Applications; or
- (viii) AP English Literature and Composition; or
- (ix) AP English Language and Composition; or
- (x) IB Language Studies A: Language and Literature Standard Level; or
- (xi) IB Language Studies A: Language and Literature Higher Level; or
- (xii) IB Language Studies A: Literature Standard Level; or
- (xiii) IB Language Studies A: Literature Higher Level; or
- (xiv) IB Literature and Performance Standard Level.

(5) Multidisciplinary studies. A student may earn a multidisciplinary studies endorsement by completing the requirements specified in subsection (e) of this section and:

(A) four advanced courses that prepare a student to enter the workforce successfully or postsecondary education without remediation from within one endorsement area or among endorsement areas that are not in a coherent sequence; or

(B) four credits in each of the four foundation subject areas to include chemistry and/or physics and English IV or a comparable AP or IB English course; or

(C) four credits in Advanced Placement, International Baccalaureate, or dual credit selected from English, mathematics, science, social studies, economics, languages other than English, or fine arts.

(g) (No change.)

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

Filed with the Office of the Secretary of State on February 11, 2019.

TRD-201900412

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 24, 2019

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



CHAPTER 113. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SOCIAL STUDIES

SUBCHAPTER C. HIGH SCHOOL

19 TAC §113.50

The State Board of Education (SBOE) proposes new §113.50, concerning Texas Essential Knowledge and Skills (TEKS) for social studies. The proposed new section would add TEKS for a new high school social studies course on Mexican American studies for implementation in the 2019-2020 school year. This rule action reflects the re-filing of the proposal adopted by the SBOE in September 2018, which expired due to a procedural error by the Texas Education Agency (TEA).

BACKGROUND INFORMATION AND JUSTIFICATION: The 83rd Texas Legislature, 2013, passed House Bill (HB) 5, amending Texas Education Code (TEC), §28.025, to change the high school graduation programs from the minimum, recommended, and advanced high school programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. In August 2013, the SBOE held a work session to discuss changes to the graduation requirements in order to align with the requirements of HB 5, including discussion of courses required by HB 5. At the January 2014 meeting, the SBOE approved the final adoption of new 19 TAC Chapter 74, Curriculum Requirements, Subchapter B, Graduation Requirements. At the April 2014 meeting, the SBOE prioritized the development of new courses to align with requirements of HB 5. The list of new courses to be developed included a Mexican American studies course.

In spring 2015, a new Mexican American Studies innovative course was approved by the commissioner of education for use beginning with the 2015-2016 school year. School districts and open-enrollment charter schools may offer any state-approved innovative course for elective credit with the approval of the local board of trustees.

There are currently state-approved TEKS for general social studies elective courses that allow educators to select specific historical, cultural, or research topics in social studies to address in greater depth. In social studies, these courses include Special Topics in Social Studies, Social Studies Research Methods, and Social Studies Advanced Studies.

The SBOE held discussions regarding the development of TEKS for a Mexican American studies course at its January-February and April 2018 meetings. At the April 2018 meeting, the

SBOE instructed staff to prepare rule text for a new course based on the currently approved Mexican American Studies innovative course submitted by Houston Independent School District and to present the item for first reading and filing authorization at the June 2018 meeting. The SBOE approved the new section for first reading and filing authorization at its June 15, 2018 meeting.

Following the June action by the SBOE to approve the proposal for first reading and filing authorization, TEA filed the proposal for publication in the *Texas Register* on July 13, 2018. The publication of the proposal initiated a timeline that required filing the rule as adopted by January 14, 2019. Because of a procedural error by TEA, the rule that was approved for second reading and final adoption by the SBOE in September 2018 was not filed by the January deadline, and the proposal expired.

At its February 1, 2019 meeting, the SBOE authorized TEA to re-file proposed new §113.50, Ethnic Studies: Mexican American Studies (One Credit), using the exact language approved by the SBOE at second reading and final adoption in September 2018. The new course would be implemented at the beginning of the 2019-2020 school year on the same timeline as the original adoption.

SUMMARY OF COMMENTS AND RESPONSES. Due to the expiration of the original proposal, a summary of the public comments received during the July 13, 2018 - September 12, 2018 comment period was not published in the *Texas Register*. Following is a summary of the public comments received on the original proposal and the responses.

Comment. A teacher expressed support for the TEKS and suggested adding additional topics, including the segregation of Mexican Americans in schools in the 20th century, bilingual education in Texas, and federal cases like *Westminster v. Mendez*, which helped shape *Brown v. Board of Education*, and *Castañeda v. Pickard*.

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the suggested additions were not necessary. In response to other comments, the SBOE took action to approve additional changes to the proposed new course. These changes are reflected in the current proposal.

Comment. A teacher recommended representing Mexican American women in Texas such as Sylvia Rivera and Emma Tenayuca (who led the Pecan Shell Strike) and including the history of the border patrol, especially the Bath Riots in El Paso and along the border; the court case of *Plyer v. Doe*; and the reflection of this history in the present-day Mexican American population and culture.

Response. The SBOE agreed that Emma Tenayuca was appropriately included in the student expectation in §113.50(c)(4)(B) as proposed; however, the SBOE disagreed that the other suggestions were necessary. In response to other comments, the SBOE took action to approve additional changes to the proposed new course at the September 2018 meeting. These changes are reflected in the current proposal.

Comment. A parent requested that the SBOE keep the name of the proposed new course as Ethnic Studies: Mexican American Studies.

Response. The SBOE agreed that the course title was appropriate and maintained the course title as proposed.

Comment. A parent questioned why the Mexican American Studies course is being created.

Response. The SBOE determined that the development of the new course provides a variety of social studies electives for students. At the September 2018 meeting, the SBOE took action to adopt the new course as amended.

Comment. Three teachers, five community members, and two university representatives stated that the proposed new course would provide students with important information, including role models, historical information, and culturally relevant coursework.

Response. The SBOE agreed. At the September 2018 meeting, the SBOE took action to adopt the new course as amended. The course as amended is reflected in the current proposal.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas recommended adding native indigenous people of Texas and the effects of Spanish colonization and missionization in Texas on the land and its people to the student expectation in §113.50(c)(2)(A).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(2)(A) was appropriate as proposed.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas recommended adding the Battle of Medina to §113.50(c)(3)(A).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(3)(A) was appropriate as proposed.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas recommended adding Jovita Idár, Sara Estela Ramírez, and Angela De Hoyos to the student expectation in §113.50(c)(3)(B).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(3)(B) was appropriate as proposed. However, in response to other comments, the SBOE took action to add Jovita Idár and Sara Estela Ramírez to the student expectation in §113.50(c)(4)(B). These changes are reflected in the current proposal.

Comment. The National Association of Chicana and Chicano Studies--Tejas Foco recommended that the term "1940s" be replaced with the term "1930s" in the knowledge and skills statement in §113.50(c)(4).

Response. The SBOE agreed. At the September 2018 meeting, the SBOE took action to amend §113.50(c)(4) to read, "The student understands the causes and impact of the Mexican American civil rights movement from the 1930s to 1975." These changes are reflected in the current proposal.

Comment. The National Association of Chicana and Chicano Studies--Tejas Foco recommended including three additions to the proposed new course: a section on Texas indigenous peoples, the inclusion of Native American and Mexican American women from Texas, and the addition of local history to help students see how their community contributed and overcame obstacles to Mexican American history.

Response. The SBOE agreed that the inclusion of woman from Texas was appropriate. At the September 2018 meeting, the SBOE took action to add Jovita Idár, Jovita González de Mireles,

Sara Estela Ramírez, Leonor Villegas de Magnon, Adela Sloss Vento, María L. de Hernández, and Alicia "Alice" Dickerson Montemayor to the list of significant individuals from the civil rights era in the student expectation in §113.50(c)(4)(B). These changes are reflected in the current proposal. However, the SBOE disagreed that the addition of local history was necessary.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas stated that proposed new Ethnic Studies: Mexican American Studies should focus less on Mexican Americans from California and focus more on those from Texas.

Response. The SBOE agreed that the proposed new course should include Mexican Americans from Texas. In response to this and other comments, the SBOE took action at the September 2018 meeting to add Texans Jovita Idár, Jovita González de Mireles, Sara Estela Ramírez, Leonor Villegas de Magnon, Adela Sloss Vento, María L. de Hernández, and Alicia "Alice" Dickerson Montemayor to the student expectation in §113.50(c)(4)(B). These changes are reflected in the current proposal.

Comment. The National Association of Chicana and Chicano Studies--Tejas Foco recommended adding Jovita Idár, Jovita González de Mireles, Emma Tenayuca, Sara Estela Ramírez, Leonor Villegas de Magnon, Adela Sloss Vento, María Hernandez, and Alicia Dickerson Montemayor to the student expectation in §113.50(c)(4)(B).

Response. The SBOE agreed. At the September 2018 meeting, the SBOE took action to add Jovita Idár, Jovita González de Mireles, Sara Estela Ramírez, Leonor Villegas de Magnon, Adela Sloss Vento, María L. de Hernandez, and Alicia "Alice" Dickerson Montemayor to the student expectation in §113.50(c)(4)(B) as recommended. These changes are reflected in the current proposal. Emma Tenayuca was already listed in the student expectation in §113.50(c)(4)(B) as proposed.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas recommended adding the Mexican American War and the concept of Manifest Destiny to the student expectation in §113.50(c)(6)(C).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(6)(C) was appropriate as proposed.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas recommended that the student expectation in §113.50(c)(7)(A) be revised to read "analyze the economic impact of Texas Independence from Mexico and the Mexican American War."

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(7)(A) was appropriate as proposed.

Comment. The National Association of Chicana and Chicano Studies--Tejas Foco recommended that *Salvatierra v. Del Rio ISD* be added to the student expectation in §113.50(c)(8)(B).

Response. The SBOE agreed. At the September 2018 meeting, the SBOE took action to amend the student expectation in §113.50(c)(8)(B) to include the *Salvatierra v. Del Rio ISD* court case. This change is reflected in the current proposal.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas recommended adding bilingual education, Chicano

Studies, and cultural arts centers to the student expectation in §113.50(c)(8)(D).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(8)(D) was appropriate as proposed.

Comment. A university representative recommended the replacement of "respectful expression" with "effective expression" in knowledge and skills statement §113.50(c)(9).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the suggested change was not necessary. In response to other comments, however, the SBOE took action to amend the knowledge and skills statement in §113.50(c)(9) to read, "The student understands the debates surrounding the nature of respectful expression of different points of view in a constitutional republic." These changes are reflected in the current proposal.

Comment. A university representative recommended replacing the phrase "describe the rights and responsibilities of Mexican Americans as Americans" with the phrase "describe the rights and responsibilities of Mexican American citizens and Mexican American immigrants" in the student expectation in §113.50(c)(9)(A).

Response. The SBOE agreed. At the September 2018 meeting, the SBOE took action to amend the student expectation in §113.50(c)(9)(A) to read, "describe the rights and responsibilities of Mexican American citizens and Mexican immigrants in civic participation within the United States." These changes are reflected in the current proposal.

Comment. A university representative recommended replacing the word "Americans" with the phrase "American citizens and immigrants in the United States" in the student expectation in §113.50(c)(9)(B).

Response. The SBOE agreed. At the September 2018 meeting, the SBOE took action to amend the expectation in §113.50(c)(9)(B) to read, "discuss ways American citizens and immigrants interpret formal citizenship and cultural citizenship, including membership in one nation and membership in diverse cultural and national groups." These changes are reflected in the current proposal.

Comment. A university representative recommended the addition of the phrases "and global community" and "and transnational communities" to §113.50(c)(9)(C).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(9)(C) was appropriate as proposed.

Comment. A university representative recommended adding the term "Latinx" and the phrase "or simply American" and including quotations around the word "illegal" in §113.50(c)(9)(D) to read, "analyze the connotations and histories of identity nomenclature relevant to Mexican Americans such as Mexican, Spanish, Hispanic, Latinx, Chicana/o, "illegal," undocumented, Mexican American, American Mexican or simply American."

Response. The SBOE agreed that the phrase "or simply American" was appropriate to include but disagreed with adding the term "Latinx" or using quotations around the word "illegal" because the SBOE determined those changes were not necessary. In response to this and other comments, at the September 2018 meeting the SBOE took action to amend the student expectation in §113.50(c)(9)(D) to read, "analyze the connotations and his-

ories of identity nomenclature relevant to Mexican Americans such as Mexican, Spanish, Hispanic, Latina/o, Chicana/o, illegal, undocumented, Mexican American, American Mexican, or simply American." These changes are reflected in the current proposal.

Comment. The National Association of Chicana and Chicano Studies--Tejas Foco recommended adding to the student expectation in §113.50(c)(10)(B) the following literary works: *George Washington Gomez* by Americo Paredes, *El Sol de Texas/Under the Texas Sun* (1926) by Conrado Espinoza, *La Patria Perdida* (1933) by Teodoro Torres, *Los de Abajo* (1915) by Mariano Azuela, and "Surge" (1910) by Sara Estela Ramirez and Jovita González de Mireles.

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(10)(B) was appropriate as proposed.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas recommended adding *Y no se lo trago la tierra* (1970) by Tomas Rivera to the student expectation in §113.50(c)(10)(B).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(10)(B) was appropriate as proposed.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas recommended adding Little Joe y La Familia to the student expectation in §113.50(c)(10)(C).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(10)(C) was appropriate as proposed.

Comment. SOMOS MAS/Mexican American Studies San Antonio, Tejas recommended adding Lydia Mendoza, Carmen Tafolla, Norma Cantu, and Selena to the student expectation in §113.50(c)(10)(D).

Response. The SBOE disagreed. At the September 2018 meeting, it was determined that the student expectation in §113.50(c)(10)(D) was appropriate as proposed.

Comment. The Texas Environmental Justice Advocacy Services and the National Association of Chicana and Chicano Studies--Tejas Foco recommended the inclusion of Dr. Mario Molina and Dr. Laura Pulido in the student expectation in §113.50(c)(11)(B).

Response. The SBOE agreed that Mario José Molina should be included in the student expectation in §113.50(c)(11)(B) but disagreed that Laura Pulido should be added. At the September 2018 meeting, the SBOE took action to amend §113.50(c)(11)(B) to read, "identify contributions to science and technology in the United States and the world made by Mexican Americans such as Albert Baez, Martha E. Bernal, Ellen Ochoa, Linda Garcia Cubero, and Mario José Molina." These changes are reflected in the current proposal.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there will be no fiscal implications for state or local government required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic im-

pact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be the addition of a new TEKS-based course option for students and increased flexibility in meeting graduation requirements. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 22, 2019, and ends March 29, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2019 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 22, 2019.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in

evaluating instructional materials and addressed on the state assessment instruments.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §7.102(c)(4) and §28.002.

§113.50. Ethnic Studies: Mexican American Studies (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 10-12.

(b) Introduction.

(1) In Ethnic Studies: Mexican American Studies, an elective course, students learn about the history and cultural contributions of Mexican Americans. Students explore history and culture from an interdisciplinary perspective. The course emphasizes events in the 20th and 21st centuries, but students will also engage with events prior to the 20th century.

(2) To support the teaching of the essential knowledge and skills, the use of a variety of rich primary and secondary source material such as biographies, autobiographies, landmark cases of the U.S. Supreme Court, novels, speeches, letters, diaries, poetry, songs, and artwork is encouraged. Motivating resources are available from museums, historical sites, presidential libraries, and local and state preservation societies.

(3) The eight strands of the essential knowledge and skills for social studies are intended to be integrated for instructional purposes. Skills listed in the social studies skills strand in subsection (c) of this section should be incorporated into the teaching of all essential knowledge and skills for social studies. A greater depth of understanding of complex content material can be attained when integrated social studies content from the various disciplines and critical-thinking skills are taught together.

(4) Students identify the role of the U.S. free enterprise system within the parameters of this course and understand that this system may also be referenced as capitalism or the free market system.

(5) Throughout social studies in Kindergarten-Grade 12, students build a foundation in history; geography; economics; government; citizenship; culture; science, technology, and society; and social studies skills. The content, as appropriate for the grade level or course, enables students to understand the importance of patriotism, function in a free enterprise society, and appreciate the basic democratic values of our state and nation as referenced in the Texas Education Code (TEC), §28.002(h).

(6) Students understand that a constitutional republic is a representative form of government whose representatives derive their authority from the consent of the governed, serve for an established tenure, and are sworn to uphold the constitution.

(7) State and federal laws mandate a variety of celebrations and observances, including Celebrate Freedom Week.

(A) Each social studies class shall include, during Celebrate Freedom Week as provided under the TEC, §29.907, or during another full school week as determined by the board of trustees of a school district, appropriate instruction concerning the intent, meaning, and importance of the Declaration of Independence and the U.S. Constitution, including the Bill of Rights, in their historical contexts. The study of the Declaration of Independence must include the study of the relationship of the ideas expressed in that document to subsequent American history, including the relationship of its ideas to the rich diversity of our people as a nation of immigrants, the American Revolution, the formulation of the U.S. Constitution, and the abolitionist movement,

which led to the Emancipation Proclamation and the women's suffrage movement.

(B) Each school district shall require that, during Celebrate Freedom Week or other week of instruction prescribed under subparagraph (A) of this paragraph, students in Grades 3-12 study and recite the following text: "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness--That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed."

(8) Students identify and discuss how the actions of U.S. citizens and the local, state, and federal governments have either met or failed to meet the ideals espoused in the founding documents.

(9) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) History. The student understands historical points of reference in Mexican American history. The student is expected to apply absolute and relative chronology through the sequencing of significant individuals, events, and time periods.

(2) History. The student understands developments related to pre-colonial settlements and Spanish colonization of Mesoamerica and North America. The student is expected to:

(A) explain the significance of the following events as turning points relevant to Mexican American history: Aztec arrival in Mexico's central valley, establishment of the Aztec Empire, Hernán Cortés's first encounter with the Aztecs, Spanish conquest of the Aztecs, creation of the New Laws, and Jesuit expulsion from the Americas; and

(B) examine the contributions of significant individuals from the Spanish colonial era, including Moctezuma, Hernán Cortés, La Malinche, Bartolomé de las Casas, and Sor Juana Inés de la Cruz.

(3) History. The student understands developments related to Mexican independence and Mexico's relationship with the United States from 1800-1930. The student is expected to:

(A) explain the significance of the following events as turning points relevant to Mexican American history: the Grito de Dolores, Mexico's acquisition of independence, Texas's declaration of independence from Mexico, Mexican-American War, Treaty of Guadalupe Hidalgo, Mexican Revolution, creation of the U.S. Border Patrol, and Mexican repatriation of the 1930s; and

(B) examine the contributions of significant individuals from this period such as Father Miguel Hidalgo, José María Morelos, Augustín de Iturbide, Emiliano Zapata, Francisco (Pancho) Villa, Francisco I. Madero, Porfirio Díaz, and Álvaro Obregón.

(4) History. The student understands the causes and impact of the Mexican American civil rights movement from the 1930s to 1975. The student is expected to:

(A) explain the significance of the following events as turning points relevant to Mexican American history: U.S. entry into World War II, Bracero Program, Longoria Affair, Operation Wetback, *Hernández v. Texas*, *Brown v. Board of Education*, Civil Rights Act of 1964, Voting Rights Act of 1965, Farmworkers strike and boycott, and establishment of La Raza Unida Party; and

(B) identify the contributions of significant individuals from the civil rights era such as César Chávez, Dolores Huerta, Reies López Tijerina, José Ángel Gutiérrez, Rubén Salazar, Emma Tenayuca, Rodolfo "Corky" Gonzales, Marcario García, Hector P. García, Raul "Roy" Perez Benavidez, Martha P. Cotera, Jovita Idár, Jovita González de Mireles, Sara Estela Ramírez, Leonor Villegas de Magnon, Adela Sloss Vento, María L. de Hernández, and Alicia "Alice" Dickerson Montemayor.

(5) History. The student understands the development of voting rights and ideas related to citizenship for Mexican Americans from 1975 to the present. The student is expected to:

(A) explain the significance of the following events as turning points relevant to Mexican American history: the Immigration Reform and Control Act, Illegal Immigration Reform and Immigration Responsibility Act; and H.R. 4437 passed by the U.S. House of Representatives in 2006; and

(B) identify the contributions of significant individuals such as Raul Yzaguirre, William "Willie" Velásquez, Gloria Evangelina Anzaldúa, Henry Cisneros, Cherríe L. Moraga, and Bill Richardson.

(6) Geography. The student understands the impact of geographic factors on major events related to Mexican Americans. The student is expected to:

(A) locate places and regions of cultural and historical significance in Mexican American history;

(B) identify physical and human geographic factors related to the settlement of American Indian societies;

(C) explain how issues of land use related to Mexican Independence, Texas Independence, and the Mexican Revolution;

(D) analyze physical and human geographic factors related to Mexican migration from the 1910s to the 1930s;

(E) identify physical and human geographic factors related to the migration of Mexican laborers as part of the 1940s Bracero Program; and

(F) analyze the physical and human geographic factors related to contemporary Mexican migration to and Mexican American migration within the United States.

(7) Economics. The student understands domestic issues related to Mexican American population growth, labor force participation, and the struggle to satisfy wants and needs given scarce resources. The student is expected to:

(A) analyze the economic impact of Mexican repatriation of the 1930s;

(B) evaluate the contributions of the Bracero Program to the U.S. war effort and the development of the agricultural economy in the American Southwest;

(C) explain the struggle to create a farmworkers union and the union's efforts to fight for better wages;

(D) analyze the economic contributions of the Mexican American labor force;

(E) analyze the purchasing power of the Mexican American population as it relates to U.S. household consumption and gross domestic product (GDP); and

(F) discuss current issues related to the Mexican American labor force.

(8) Government. The student understands the significance of political decisions and the struggle for Mexican American political power throughout U.S. history. The student is expected to:

(A) describe how Mexican Americans have participated in supporting and changing government;

(B) analyze the impact of *Salvatierra v. Del Rio Independent School District (ISD)*, *Delgado v. Bastrop ISD*, and *Hernández v. Texas* on Mexican Americans and the end of the biracial paradigm;

(C) analyze the Mexican American struggle for civil rights as manifested in the Chicano movement;

(D) evaluate the successes and failures of the Mexican American civil rights movement and the farmworkers movement;

(E) analyze the significance of U.S. Supreme Court decisions in *Miranda v. Arizona*, *San Antonio ISD v. Rodríguez*, and *Plyler v. Doe*; and

(F) discuss the role of various organizations such as the American G.I. Forum, the League of United Latin American Citizens (LULAC), the Mexican American Legal Defense and Educational Fund (MALDEF), the National Association of Latino Elected and Appointed Officials (NALEO), and the National Council of La Raza (NCLR) that have participated in the Mexican American struggle for political power.

(9) Citizenship. The student understands the debates surrounding the nature of respectful expression of different points of view in a constitutional republic. The student is expected to:

(A) describe the rights and responsibilities of Mexican American citizens and Mexican immigrants in civic participation within the United States;

(B) discuss ways American citizens and immigrants interpret formal citizenship and cultural citizenship, including membership in one nation and membership in diverse cultural and national groups;

(C) discuss ways individuals contribute to the national identity as members of diverse cultural groups; and

(D) analyze the connotations and histories of identity nomenclature relevant to Mexican Americans such as Mexican, Spanish, Hispanic, Latina/o, Chicana/o, illegal, undocumented, Mexican American, American Mexican, or simply American.

(10) Culture. The student understands the relationship between Mexican American artistic expression and the times during which the art was created. The student is expected to:

(A) describe how the characteristics and issues of Mexican American history have been reflected in various genres of art, music, film, and literature;

(B) analyze the significance of selected works of Mexican American literature such as "I am Joaquín" (1967) by Rodolfo "Corky" Gonzales and "Pensamiento Serpentino" (1971) by Luis Valdez;

(C) describe the role of artistic expression in mobilizing Mexican Americans and others toward civic participation and action such as the role of "Teatro Campesino" during the farmworkers movement;

(D) identify the contributions of women such as Sandra Cisneros and Norma Alarcón; and

(E) identify the impact of Mexican American popular culture on the United States and the world over time.

(11) Science, technology, and society. The student understands the impact of Mexican American individuals and groups on the development of science and technology in American society and on a global scale. The student is expected to:

(A) explain the major ideas in astronomy, mathematics, and architectural engineering that developed in the Maya and Aztec civilizations; and

(B) identify contributions to science and technology in the United States and the world made by Mexican Americans such as Albert Baez, Martha E. Bernal, Ellen Ochoa, Linda Garcia Cubero, and Mario José Molina.

(12) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of valid sources, including electronic technology. The student is expected to:

(A) use social studies terminology correctly;

(B) analyze diverse points of view related to contemporary Mexican American issues;

(C) create a written and/or oral presentation on a contemporary issue or topic relevant to Mexican Americans using critical methods of inquiry; and

(D) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS SUBCHAPTER C. HIGH SCHOOL

19 TAC §126.51, §126.52

The State Board of Education (SBOE) proposes new §126.51 and §126.52, concerning Texas Essential Knowledge and Skills (TEKS) for Technology Applications. The proposed new sections would add TEKS for two new technology applications courses in cybersecurity for implementation in the 2019-2020 school year.

BACKGROUND INFORMATION AND JUSTIFICATION: The 85th Texas Legislature, Regular Session, 2017, passed House Bill (HB) 3593, adding Texas Education Code (TEC), §28.002(f)(2), to require that the SBOE approve courses in cybersecurity for credit for high school graduation. HB 3593 amended TEC, §28.025(c-1)(1), to add cybersecurity and

computer coding to the courses to be included in a STEM endorsement. HB 3593 also added TEC, §28.025(c)(10), to require that the SBOE adopt or select five technology applications courses on cybersecurity to be included in a cybersecurity pathway for the STEM endorsement.

In spring 2015, a new Principles in Cybersecurity innovative course was approved by the commissioner of education for use beginning with the 2016-2017 school year. School districts and open-enrollment charter schools may offer any state-approved innovative course for elective credit with the approval of the local board of trustees.

In August 2018, a committee of secondary and postsecondary educators and business and industry representatives were selected to develop recommended TEKS for new cybersecurity courses for the pathway. The committee convened for the first face-to-face meeting in Austin in September 2018 to begin working on recommendations for a TEKS-based foundational course in cybersecurity based on the Principles in Cybersecurity innovative course. The committee participated in an additional face-to-face meeting in October 2018 to develop recommendations for a second cybersecurity course that would serve as a capstone for the cybersecurity pathway. At the November 2018 meeting, the SBOE discussed proposed new 19 TAC §126.51 and §126.52. Draft TEKS for the proposed new courses were sent to interested stakeholders to provide feedback in December 2018. In January 2019, the committee participated in another face-to-face meeting to review comments provided by interested stakeholders and to finalize recommendations for the two cybersecurity courses.

The proposed new sections would add §126.51, Foundations of Cybersecurity (One Credit), and §126.52, Cybersecurity Capstone (One Credit), to the TEKS for technology applications.

The SBOE approved the new sections for first reading and filing authorization at its February 1, 2019 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposal is in effect there will be fiscal implications for state government. For fiscal year 2019, the estimated cost to Texas Education Agency (TEA) to reimburse committee members for travel to review and streamline the TEKS is \$10,000. There would also be implications for the TEA if the state creates professional development to help teachers and administrators understand the new TEKS. Any professional development that is created would be based on whether TEA receives an appropriation for professional development in the next biennium.

The proposal may have fiscal implications for school districts and charter schools to implement the new TEKS. The costs may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be the addition of two new TEKS-based courses for students and an increase in flexibility in meeting graduation requirements. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 22, 2019, and ends March 29, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2019 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 22, 2019.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(f)(2), which requires the SBOE to approve courses in cybersecurity for credit for high school graduation; TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the

foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002, and to designate the specific courses in the foundation curriculum that are required under the foundation high school program; TEC, §28.025(c-1)(1), which establishes that an endorsement may be earned in science, technology, engineering, and mathematics (STEM), which includes courses related to science, including environmental science; technology, including computer science, cybersecurity, and computer coding; engineering; and advanced mathematics; and TEC, §28.025(c-10), which requires the SBOE to adopt or select five technology applications courses on cybersecurity to be included in a cybersecurity pathway for the STEM endorsement.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4), 28.002, and 28.025. §126.51. *Foundations of Cybersecurity (One Credit)*.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) Cybersecurity is an evolving discipline concerned with safeguarding computers, networks, programs, and data from unauthorized access. As a field, it has gained prominence with the emergence of a globally-connected society. As computing has become more sophisticated, so too have the abilities of malicious agents looking to penetrate networks and seize private information. By evaluating prior incidents, cybersecurity professionals have the ability to craft appropriate responses to minimize disruptions to corporations, governments, and individuals.

(3) In the Foundations of Cybersecurity course, students will develop the knowledge and skills needed to explore fundamental concepts related to the ethics, laws, and operations of cybersecurity. Students will examine trends and operations of cyberattacks, threats, and vulnerabilities. Students will review and explore security policies designed to mitigate risks. The skills obtained in this course prepare students for additional study in cybersecurity. A variety of courses are available to students interested in this field. Foundations of Cybersecurity may serve as an introductory course in this field of study.

(4) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Employability skills. The student demonstrates necessary skills for career development and successful completion of course outcomes. The student is expected to:

(A) identify and demonstrate employable work behaviors such as regular attendance, punctuality, maintenance of a professional work environment, and effective written and verbal communication;

(B) identify and demonstrate positive personal qualities such as authenticity, resilience, initiative, and a willingness to learn new knowledge and skills;

(C) solve problems and think critically;

(D) demonstrate leadership skills and function effectively as a team member; and

(E) demonstrate an understanding of ethical and legal responsibilities in relation to the field of cybersecurity.

(2) Employability skills. The student identifies various employment opportunities and requirements in the cybersecurity field. The student is expected to:

(A) identify job and internship opportunities as well as accompanying duties and tasks;

(B) research careers in cybersecurity and information assurance along with the education and job skills required for obtaining a job in both the public and private sectors;

(C) identify and discuss certifications for cybersecurity-related careers; and

(D) research and develop resumes, digital portfolios, or professional profiles in the cybersecurity field.

(3) Ethics and laws. The student understands ethical and current legal standards, rights and restrictions governing technology, technology systems, digital media, and the use of social media. The student is expected to:

(A) demonstrate and advocate for ethical and legal behaviors both online and offline among peers, family, community, and employers;

(B) research local, state, national, and international cyber law such as the PATRIOT Act of 2001, General Data Protection Regulation, and Digital Millennium Copyright Act;

(C) research historic cases or events regarding cyber;

(D) demonstrate an understanding of ethical and legal behavior when presented with various scenarios related to cyber activities;

(E) define and identify techniques such as hacking, phishing, social engineering, online piracy, spoofing, and data vandalism; and

(F) identify and use appropriate methods for citing sources.

(4) Ethics and laws. The student identifies the consequences of ethical versus malicious hacking. The student is expected to:

(A) identify motivations for hacking;

(B) identify and describe the impact of cyberattacks on the global community, society, and individuals;

(C) distinguish between a cyber attacker and a cyber defender;

(D) differentiate types of hackers such as black hats, white hats, and gray hats;

(E) determine possible outcomes and legal ramifications of ethical versus malicious hacking practices; and

(F) debate the varying perspectives of ethical versus malicious hacking.

(5) Ethics and laws. The student identifies and defines cyberterrorism and counterterrorism. The student is expected to:

(A) define cyberterrorism, state-sponsored cyberterrorism, and hacktivism;

(B) compare and contrast physical terrorism and cyberterrorism, including domestic and foreign actors;

(C) define and explain intelligence gathering and counterterrorism;

(D) identify the role of cyber defenders in protecting national interests and corporations;

(E) identify the role of cyber defense in society and the global economy; and

(F) explain the importance of protecting public infrastructures such as electrical power grids, water systems, pipelines, transportation, and nuclear plants.

(6) Digital citizenship. The student understands and demonstrates the social responsibility of end users regarding significant issues related to digital technology, digital hygiene, and cyberbullying. The student is expected to:

(A) identify and understand the nature and value of privacy;

(B) analyze the positive and negative implications of a digital footprint and the maintenance and monitoring of an online presence;

(C) discuss the role and impact of technology on privacy;

(D) identify the signs, emotional effects, and legal consequences of cyberbullying and cyberstalking; and

(E) identify and discuss effective ways to prevent, deter, and report cyberbullying.

(7) Cybersecurity skills. The student understands basic cybersecurity concepts and definitions. The student is expected to:

(A) define information security and cyber defense;

(B) identify basic risk management and risk assessment principles related to cybersecurity threats and vulnerabilities;

(C) explain the fundamental concepts of confidentiality, integrity, availability, authentication, and authorization;

(D) describe the inverse relationship between privacy and security;

(E) identify and analyze cybersecurity breaches and incident responses;

(F) identify and analyze security concerns in areas such as physical, network, cloud, and web;

(G) define and discuss challenges faced by cybersecurity professionals;

(H) identify common risks, alerts, and warning signs of compromised computer and network systems;

(I) understand and explore the vulnerability of network-connected devices; and

(J) use appropriate cybersecurity terminology.

(8) Cybersecurity skills. The student understands and explains various types of malicious software (malware). The student is expected to:

(A) define malware, including spyware, ransomware, viruses, and rootkits;

(B) identify the transmission and function of malware such as Trojans, worms, and viruses;

(C) discuss the impact malware has had on the cybersecurity landscape;

(D) explain the role of reverse engineering for detecting malware and viruses;

(E) compare free and commercial antivirus software alternatives; and

(F) compare free and commercial anti-malware software alternatives.

(9) Cybersecurity skills. The student understands and demonstrates knowledge of techniques and strategies to prevent a system from being compromised. The student is expected to:

(A) define system hardening;

(B) demonstrate basic use of system administration privileges;

(C) explain the importance of patching operating systems;

(D) explain the importance of software updates;

(E) describe standard practices to configure system services;

(F) explain the importance of backup files; and

(G) research and understand standard practices for securing computers, networks, and operating systems.

(10) Cybersecurity skills. The student understands basic network operations. The student is expected to:

(A) identify basic network addressing and devices, including switches and routers;

(B) analyze incoming and outgoing rules for traffic passing through a firewall;

(C) identify well known ports by number and service provided, including port 22 (ssh), port 80 (http), and port 443 (https);

(D) identify commonly exploited ports and services, including ports 20 and 21 (ftp) and port 23 (telnet); and

(E) identify common tools for monitoring ports and network traffic.

(11) Cybersecurity skills. The student identifies standard practices of system administration. The student is expected to:

(A) define what constitutes a secure password;

(B) create a secure password policy, including length, complexity, account lockout, and rotation;

(C) identify methods of password cracking such as brute force and dictionary attacks; and

(D) examine and configure security options to allow and restrict access based on user roles.

(12) Cybersecurity skills. The student demonstrates necessary steps to maintain user access on the computer system. The student is expected to:

(A) identify the different types of user accounts and groups on an operating system;

(B) explain the fundamental concepts and standard practices related to access control, including authentication, authorization, and accounting;

(C) compare methods for single- and dual-factor authentication such as passwords, biometrics, personal identification numbers (PINs), and security tokens;

(D) define and explain the purpose of an air-gapped computer; and

(E) explain how hashes and checksums may be used to validate the integrity of transferred data.

(13) Cybersecurity skills. The student explores the field of digital forensics. The student is expected to:

(A) explain the importance of digital forensics to law enforcement, government agencies, and corporations;

(B) identify the role of chain of custody in digital forensics;

(C) explain the four steps of the forensics process, including collection, examination, analysis, and reporting;

(D) identify when a digital forensics investigation is necessary;

(E) identify information that can be recovered from digital forensics investigations such as metadata and event logs; and

(F) analyze the purpose of event logs and identify suspicious activity.

(14) Cybersecurity skills. The student explores the operations of cryptography. The student is expected to:

(A) explain the purpose of cryptography and encrypting data;

(B) research historical uses of cryptography; and

(C) review simple cryptography methods such as shift cipher and substitution cipher.

(15) Risk assessment. The student understands information security vulnerabilities, threats, and computer attacks. The student is expected to:

(A) define and describe vulnerability, payload, exploit, port scanning, and packet sniffing as they relate to hacking;

(B) define and describe cyberattacks, including man-in-the-middle, distributed denial of service, and spoofing;

(C) explain how computer vulnerabilities leave systems open to cyberattacks;

(D) identify threats to systems such as back-door attacks and insider threats;

(E) differentiate types of social engineering attacks such as phishing, shoulder surfing, hoaxes, and dumpster diving;

(F) explain how users are the most common vehicle for compromising a system at the application level; and

(G) identify various types of application-specific attacks.

(16) Risk assessment. The student understands, identifies, and explains the strategies and techniques of both ethical and malicious hackers. The student is expected to:

(A) identify internal and external threats to computer systems;

(B) identify the capabilities of vulnerability assessment tools, including open source tools; and

(C) explain the concept of penetration testing, tools, and techniques.

(17) Risk assessment. The student evaluates the risks of wireless networks. The student is expected to:

(A) compare risks associated with connecting devices to public and private wireless networks;

(B) explain device vulnerabilities and security solutions on a wireless network;

(C) compare wireless encryption protocols;

(D) debate the broadcasting or hiding of a wireless service set identifier (SSID); and

(E) research and discuss wireless threats such as MAC spoofing and war driving.

(18) Risk assessment. The student analyzes threats to computer applications. The student is expected to:

(A) define application security;

(B) identify methods of application security such as secure development practices;

(C) discuss methods of online spoofing such as web links in email, instant messaging, social media, and other online communication with malicious links;

(D) explain the purpose and function of vulnerability scanners;

(E) explain how coding errors may create system vulnerabilities; and

(F) analyze the risks of distributing insecure programs.

(19) Risk assessment. The student understands the implications of sharing information and access with others. The student is expected to:

(A) describe the impact of granting applications unnecessary permissions;

(B) describe the risks of granting third parties access to personal and proprietary data on social media and systems; and

(C) describe the risks involved with accepting Terms of Service (ToS) or End User License Agreements (EULA) without a basic understanding of the terms or agreements.

§126.52. Cybersecurity Capstone (One Credit).

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 11 and 12. Recommended prerequisite: Foundations of Cybersecurity.

(b) Introduction.

(1) Career and technical education instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging foundations.

(2) Cybersecurity is an evolving discipline concerned with safeguarding computers, networks, programs, and data from unauthorized access. As a field, it has gained prominence with the emergence

of a globally-connected society. As computing has become more sophisticated, so too have the abilities of malicious agents looking to penetrate networks and seize private information. By evaluating prior incidents, cybersecurity professionals have the ability to craft appropriate responses to minimize disruptions to corporations, governments, and individuals.

(3) In the Cybersecurity Capstone course, students will develop the knowledge and skills needed to explore advanced concepts related to the ethics, laws, and operations of cybersecurity. Students will examine trends and operations of cyberattacks, threats, and vulnerabilities. Students will develop security policies to mitigate risks. The skills obtained in this course prepare students for additional study toward industry certification. A variety of courses are available to students interested in the cybersecurity field. Cybersecurity Capstone may serve as a culminating course in this field of study.

(4) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Employability skills. The student demonstrates necessary skills for career development and successful completion of course outcomes. The student is expected to:

(A) identify and demonstrate employable work behaviors such as regular attendance, punctuality, maintenance of a professional work environment, and effective written and verbal communication;

(B) identify and demonstrate positive personal qualities such as authenticity, resilience, initiative, and a willingness to learn new knowledge and skills;

(C) solve problems and think critically;

(D) demonstrate leadership skills and function effectively as a team member; and

(E) demonstrate an understanding of ethical and legal responsibilities in relation to the field of cybersecurity.

(2) Employability skills. The student identifies various employment opportunities in the cybersecurity field. The student is expected to:

(A) develop a personal career plan along with the education, job skills, and experience necessary to achieve career goals;

(B) develop a resume or a portfolio appropriate to a chosen career plan; and

(C) illustrate interview skills for successful job placement.

(3) Ethics and laws. The student evaluates ethical and current legal standards, rights and restrictions governing technology, technology systems, digital media and information technology, and the use of social media in the context of today's society. The student is expected to:

(A) analyze and apply to a scenario local, state, national, and international cyber law such as David's Law and Digital Millennium Copyright Act;

(B) evaluate historic cases or events regarding cyber; and

(C) explore compliance requirements such as Section 508 of the Rehabilitation Act of 1973, Family Educational Rights and Privacy Act of 1974 (FERPA), Health Insurance Portability and

Accountability Act of 1996 (HIPAA), and Gramm-Leach-Bliley Act (GLBA).

(4) Digital citizenship. The student understands and demonstrates the social responsibility of end users regarding significant issues relating to digital technology, safety, digital hygiene, and cyberbullying. The student is expected to:

(A) debate the relationship between privacy and security; and

(B) identify ethical or unethical behavior when presented with various scenarios related to cyber activities.

(5) Cybersecurity skills. The student explains the importance and process of penetration testing. The student is expected to:

(A) define the phases of penetration testing, including plan, discover, attack, and report;

(B) develop a plan to gain authorization for penetration testing;

(C) identify commonly used vulnerability scanning tools such as port scanning, packet sniffing, and password crackers;

(D) develop a list of exploits based on results of scanning tool reports; and

(E) prioritize a list of mitigations based on results of scanning tool reports.

(6) Cybersecurity skills. The student understands common cryptographic methods. The student is expected to:

(A) evaluate symmetric and asymmetric algorithms such as substitution cipher, Advanced Encryption Standard (AES), Diffie-Hellman, and Rivest-Shamir-Adleman (RSA);

(B) explain the purpose of hashing algorithms, including blockchain;

(C) explain the function of password salting;

(D) explain and create a digital signature; and

(E) explain steganography.

(7) Cybersecurity skills. The student understands the concept of cyber defense. The student is expected to:

(A) explain the purpose of establishing system baselines;

(B) evaluate the role of physical security;

(C) evaluate the functions of network security devices such as firewalls, intrusion detection systems (IDS), intrusion prevention systems (IPS), and intrusion detection prevention systems (IDPS);

(D) analyze log files for anomalies; and

(E) develop a plan demonstrating the concept of defense in depth.

(8) Cybersecurity skills. The student demonstrates an understanding of secure network design. The student is expected to:

(A) explain the benefits of network segmentation, including sandboxes, air gaps, and virtual local area networks (VLAN);

(B) investigate the role of software-managed networks, including virtualization;

(C) discuss the role of honeypots and honeynets in networks; and

(D) create an incoming and outgoing network policy for a firewall.

(9) Cybersecurity skills. The student integrates principles of digital forensics. The student is expected to:

(A) identify cyberattacks by their signatures;

(B) explain proper data acquisition;

(C) examine evidence from devices for suspicious activities; and

(D) research current cybercrime cases involving digital forensics.

(10) Cybersecurity skills. The student explores emerging technology. The student is expected to:

(A) describe the integration of artificial intelligence and machine learning in cybersecurity;

(B) investigate impacts made by predictive analytics on cybersecurity; and

(C) research other emerging trends such as augmented reality and quantum computing.

(11) Cybersecurity skills. The student uses various operating system environments. The student is expected to:

(A) issue commands via the command line interface (CLI) such as ls, cd, pwd, cp, mv, chmod, ps, sudo, and passwd;

(B) describe the file system structure for multiple operating systems;

(C) manipulate and edit files within the CLI; and

(D) determine network status using the CLI with commands such as ping, ifconfig/ipconfig, traceroute/tracert, and netstat.

(12) Cybersecurity skills. The student clearly and effectively communicates technical information. The student is expected to:

(A) collaborate with others to create a technical report;

(B) create, review, and edit a report summarizing technical findings; and

(C) present technical information to a non-technical audience.

(13) Risk assessment. The student analyzes various types of threats, attacks, and vulnerabilities. The student is expected to:

(A) differentiate types of attacks, including operating systems, software, hardware, network, physical, social engineering, and cryptographic;

(B) explain blended threats such as combinations of software, hardware, network, physical, social engineering, and cryptographic;

(C) discuss risk response techniques, including accept, transfer, avoid, and mitigate;

(D) develop a plan of preventative measures to address cyberattacks;

(E) describe common web vulnerabilities such as cross-site scripting, buffer overflow, injection, spoofing, and denial of service;

(F) describe common data destruction and media sanitation practices such as wiping, shredding, and degaussing; and

(G) develop an incident response plan for a given scenario or recent attack.

(14) Risk assessment. The student understands risk management processes and concepts. The student is expected to:

(A) describe various access control methods such as mandatory access control (MAC), role-based access control (RBAC), and discretionary access control (DAC);

(B) develop and defend a plan for multi-factor access control using components such as biometric verification systems, key cards, tokens, and passwords; and

(C) review a disaster recovery plan (DRP) that includes backups, redundancies, system dependencies, and alternate sites.

(15) Risk assessment. The student investigates the role and effectiveness of environmental controls. The student is expected to:

(A) explain commonly used physical security controls, including lock types, fences, barricades, security doors, and mantraps; and

(B) describe the role of embedded systems such as fire suppression; heating, ventilation, and air conditioning (HVAC) systems; security alarms; and video monitoring.

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 February 11, 2019.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 24, 2019

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



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.15

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.15, Experience Required for Licensing.

The TALCB Enforcement Committee recommends the proposed amendments to implement recommendations from the Sunset Commission directing TALCB to evaluate and update key performance measures, including the average time to issue a license.

The proposed amendments to §153.15 would encourage applicants to submit experience work files in connection with a license application sooner by reducing the response time from 60 to 40

days. This change in addition to other internal improvements and processing changes would reduce overall application processing time and the average time to issue a license. The amendments would also allow applicants to request an extension if needed. The amendments clarify that a failure to respond to a request for work files or the submission of experience work files that do not comply with the Uniform Standards of Professional Appraisal Practice (USPAP) may result in the denial of an application. The amendments distinguish that a license holder who applies to upgrade an existing license and submits work files that do not comply with USPAP may be subject to disciplinary action in addition to the application being subject to denial.

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

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect, the public benefits anticipated as a result of enforcing the proposed amendments will be shorter application processing times and greater clarity and consistency for applicants and license holders.

Growth Impact Statement:

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

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

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as the proposed amendments conform the response time required in this section with the response times required in other TALCB Rules.

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

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.15. Experience Required for Licensing.

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

(h) The Board must verify the experience claimed by each applicant generally complies with USPAP.

(1) Verification may be obtained by:

(A) requesting copies of appraisals and all supporting documentation, including the work files; and

(B) engaging in other investigative research determined to be appropriate by the Board.

(2) If the Board requests documentation from an applicant to verify experience claimed by an applicant, the applicant has 40 [60] days to provide the requested documentation to the Board. The 40-day period may be extended for good cause upon request in writing or by e-mail.

(3) Failure to comply with a request for documentation to verify experience, or submission of experience that is found not to comply with the requirements for experience credit, [is a violation of these rules and] may result in denial of a license application[, and any disciplinary action up to and including revocation].

(4) A license holder who applies to upgrade an existing license and submits experience that does not comply with USPAP may also be subject to disciplinary action up to and including revocation.

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 February 11, 2019.

TRD-201900415

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: March 24, 2019

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



22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.24, Complaint Processing.

The TALCB Enforcement Committee recommends the proposed amendments to implement recommendations from the Sunset Commission directing TALCB to prioritize complaint investigations based on the risk of harm each complaint poses to the public and to improve TALCB's investigative process and reduce complaint resolution timeframes. The proposed amendments clarify the process and set forth the criteria for prioritizing complaint investigations. The proposed amendments also clarify who must sign agreed resolutions of complaint matters under Tex. Occ. Code §1103.458 and §1103.459.

Kristen Worman, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the pro-

posed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be transparency and improved guidance and information for license holders and members of the public about TALCB's investigative processes and a reduction in complaint resolution timeframes.

Growth Impact Statement:

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

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

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as the proposed amendments would simply provide additional guidance to license holders and the public about how TALCB prioritizes complaint investigations and the investigative process.

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

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.24. *Complaint Processing.*

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the individual named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff shall:

- (1) assign the complaint a case number in the complaint tracking system; and
- (2) send written acknowledgement of receipt to the complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the Act, Board rules, or USPAP that:

(1) evidence serious deficiencies, including:

- (A) Fraud;
- (B) Identity theft;
- (C) Unlicensed activity;
- (D) Ethical violations;
- (E) Failure to properly supervise an appraiser trainee;

or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

(2) were done:

- (A) with knowledge;
- (B) deliberately;
- (C) willfully; or
- (D) with gross negligence.

(c) [b] If the staff determines at any time that the complaint is not within the Board's jurisdiction or that no violation exists, the complaint shall be dismissed with no further processing. The Board or the commissioner may delegate to staff the duty to dismiss complaints.

(d) [(e)] A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

- (1) may be investigated covertly; and
- (2) shall be referred to the appropriate prosecutorial authorities.

(e) [(d)] Staff may request additional information from any person, if necessary, to determine how to proceed with the complaint.

(f) [(e)] As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation shall be sent to the Respondent unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(g) [(f)] The Respondent shall submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response shall include the following:

- (1) a copy of the appraisal report that is the subject of the complaint;
- (2) a copy of the Respondent's work file associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s): I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE. (SIGNATURE OF RESPONDENT);
- (3) a narrative response to the complaint, addressing each and every item in the complaint;

(4) a list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) any documentation that supports Respondent's position that was not in the work file, as long as it is conspicuously labeled as non-work file documentation and kept separate from the work file. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(h) [(g)] Staff will evaluate the complaint within three months after receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the Act, Board rules, or the USPAP exists to pursue investigation and possible formal disciplinary action. If the staff determines that there is no jurisdiction, no violation exists, there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (l) [(k)] of this section, the complaint shall be dismissed with no further processing.

(i) [(h)] A formal complaint will be opened and investigated by a staff investigator or peer investigative committee, as appropriate, if:

(1) the informal complaint is not dismissed under subsection (h) [(g)] of this section; or

(2) staff opens a formal complaint on its own motion.

(j) [(i)] Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(k) [(j)] The staff investigator or peer investigative committee assigned to investigate a formal complaint shall prepare a report detailing its findings on a form approved by the Board. Reports prepared by a peer investigative committee shall be reviewed by the Standards and Enforcement Services Division.

(l) [(k)] In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff, the administrative law judge in a contested case hearing, and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) A person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline was issued by the Board more than seven years before the current alleged violation occurred;

(B) Prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(C) A violation refers to a violation of any provision of the Act, Board rules or USPAP;

(D) "Minor deficiencies" is defined as violations of the Act, Board rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the license holder's honesty, integrity, or trustworthiness to the Board, the license holder's clients, or intended users of the appraisal service provided;

(E) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP that:

(i) impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the license holder's honesty, trustworthiness or integrity to the Board, the license holder's clients, or intended users of the appraisal service provided; or

(ii) are deficiencies done with knowledge, deliberate or willful disregard, or gross negligence that would otherwise be classified as "minor deficiencies";

(F) "Remedial measures" include, but are not limited to, training, mentorship, education, reexamination, or any combination thereof; and

(G) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If the Respondent completes all remedial measures required in the agreement within the prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal and, if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the prior discipline, including:

(i) Whether prior discipline concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions previously imposed; and

(iii) The length of time since the prior discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal/instance of conduct or multiple appraisals/instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac; or

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the extent or amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(3) The following sanctions guidelines shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

or

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures; or

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, not to exceed \$3,000 in the aggregate.

(C) 1st Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(D) 2nd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

or

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to \$250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(E) 2nd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(F) 2nd Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(G) 3rd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent's is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) \$1,000 to \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(H) 3rd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3--violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; or

(ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum \$5,000 statutory limit per complaint matter.

(J) 4th Time Discipline--violations of the Act, Board rules, or USPAP will result in a final order which imposes the following:

(i) A revocation; and

(ii) \$1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board rules, or the Act, up to the maximum \$5,000 statutory limit per complaint matter.

(K) Unlicensed appraisal activity will result in a final order which imposes a \$1,500 in administrative penalties per unlicensed appraisal activity, up to the maximum \$5,000 statutory limit per complaint matter.

(4) In addition, staff may recommend any or all of the following:

(A) reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) probating all or a portion of any sanction or administrative penalty for a period not to exceed five years;

(C) requiring additional reporting requirements; and

(D) such other recommendations, with documented support, as will achieve the purposes of the Act, Board rules, or USPAP.

(m) [(H)] Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1103.458 or §1103.459 must be signed by: [the Respondent, a representative of the Standards and Enforcement Services Division, and the Commissioner.]

- (1) the Board Chair;
- (2) Respondent;
- (3) a representative of the Standards and Enforcement Services Division; and
- (4) the Commissioner.

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 February 11, 2019.

TRD-201900416
 Kristen Worman
 General Counsel

Texas Appraiser Licensing and Certification Board
 Earliest possible date of adoption: March 24, 2019
 For further information, please call: (512) 936-3652



CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER D. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

22 TAC §157.25

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.25, Temporary Suspension.

The TALCB Enforcement Committee recommends the proposed amendments to implement recommendations from the Sunset Commission directing TALCB to prioritize complaint investigations based on the risk of harm each complaint poses to the public. The proposed amendments clarify the process and set forth the criteria for seeking a temporary suspension when a complaint investigation is pending.

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

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

Growth Impact Statement:

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

- create or eliminate a government program;

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

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

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

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

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

§157.25. Temporary Suspension.

(a) The purpose of a temporary suspension proceeding is to determine whether the continued practice by a person licensed, certified or registered by the Board would constitute a continuing threat to the public welfare. A temporary suspension proceeding is ancillary to a disciplinary proceeding regarding alleged violations of the Act or Board rules and is not dispositive concerning any such violations.

(b) Board staff may request the Board to grant a temporary suspension if:

(1) the Board has opened a complaint investigation against a license holder; and

(2) the following criteria are met:

(A) credible evidence shows:

(i) a license holder may continue to engage in conduct that may violate the Act, Board rules, or USPAP;

(ii) the license holder's conduct involves recent or current appraisal practice; and

(B) sufficient evidence is available to proceed with a contested case hearing within 45 days of a temporary suspension proceeding.

(c) [(b)] The three Board members of the Enforcement Committee appointed by the chair of the Board shall serve as the disciplinary panel ("Panel") under Texas Occupations Code, §1103.5511 and §1104.211. The chair of the Board shall also appoint a Board member to act as an alternate member of the Panel in the event a member of the Panel is recused or unable to attend a temporary suspension proceeding.

(d) [(e)] Board staff must request a temporary suspension proceeding in writing by filing a motion for temporary suspension with the Board's general counsel.

(e) [(d)] The Panel may make a determination regarding a temporary suspension without notice or hearing pursuant to Texas Occupations Code, §1103.5511(c)(1) or §1104.211(c)(1), or may, if appropriate in the judgment of the chair of the Panel, provide the license holder or registrant with three days' notice of a temporary suspension hearing.

(f) [(e)] The requirement under Texas Occupations Code, §1103.5511(c)(1) or §1104.211(c)(1) that "institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension" shall be satisfied if, on the same day the motion for temporary suspension is filed with the Board's general counsel, the licensed, certified or registered person that is the subject of the temporary suspension motion, and the State Office of Administrative Hearings, as applicable, is sent one of the following documents that alleges facts that precipitated the need for a temporary suspension:

- (1) Notice of Alleged Violation;
- (2) Original Statement of Charges; or
- (3) Amended Statement of Charges.

(g) [(f)] The Panel shall post notice of the temporary suspension proceeding pursuant to §551.045 of the Texas Government Code and Texas Occupations Code, §1103.5511(e) or §1104.211(e) and hold the temporary suspension proceeding as soon as possible.

(h) [(g)] The determination whether the continued practice by a person licensed, certified or registered by the Board would constitute a continuing threat to the public welfare shall be made from information presented to the Panel. The Panel may receive information and testimony in oral or written form. Documentary evidence must be submitted to the Board's general counsel in electronic format at least 24 hours in advance of the time posted for the temporary suspension hearing in all cases where the Panel will be meeting via teleconference. If a hearing is held following notice to a license holder or registrant, Board staff will have the burden of proof and shall open and close. The party responding to the motion for temporary suspension may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the chair of the Panel. The chair of the Panel may set reasonable time limits for any oral arguments and evidence to be presented by the parties. The Panel may question witnesses and attorneys at the members' discretion. Information and testimony that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

(i) [(h)] The determination of the Panel may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(j) [(i)] If the Panel suspends a license or certificate, it shall do so by order and the suspension shall remain in effect for the period of time stated in the order, not to exceed the date a final order is issued by the Board in the underlying contested case proceeding. The Panel order must recite the factual and legal basis for imminent peril warranting temporary suspension.

(k) [(j)] A temporary suspension under Texas Occupations Code §1103.5511 or §1104.211 shall not automatically expire after 45 days if the Board has scheduled a hearing on the contested case to take place within that time and the hearing is continued beyond the 45th day for any reason other than at the request of the Board.

(l) [(k)] If credible and verifiable information that was not presented to the Panel at a temporary suspension hearing, which contra-

dicts information that influenced the decision of the Panel to order a temporary suspension, is subsequently presented to the Panel with a motion for rehearing on the suspension, the chair of the Panel will schedule a rehearing on the matter. The chair of the Panel will determine, in the chair's sole discretion, whether the new information meets the standard set out in this subsection. A rehearing on a temporary suspension will be limited to presentation and rebuttal of the new information. The chair of the Panel may set reasonable time limits for any oral arguments and evidence to be presented by the parties. Panel members may question witnesses and attorneys. Information and testimony that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered. Any temporary suspension previously ordered will remain in effect, unless the Panel holds a rehearing on the matter and issues a new order rescinding the temporary suspension.

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 February 11, 2019.

TRD-201900417

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: March 24, 2019

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



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

22 TAC §159.204

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §159.204, Complaint Processing.

The TALCB Enforcement Committee recommends the proposed amendments to implement recommendations from the Sunset Commission directing TALCB to prioritize complaint investigations based on the risk of harm each complaint poses to the public and to improve TALCB's investigative process and reduce complaint resolution timeframes. The proposed amendments clarify the process and set forth the criteria for prioritizing complaint investigations for complaints against Appraisal Management Companies (AMCs). The proposed amendments also clarify who must sign agreed resolutions of AMC complaint matters under Tex. Occ. Code §1104.208.

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

Ms. Worman has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be transparency and improved guidance and information for license holders and members of the public about TALCB's investigative processes and a reduction in complaint resolution timeframes.

Growth Impact Statement:

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

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

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy as the proposed amendments would simply provide additional guidance to license holders and the public about how TALCB prioritizes complaint investigations and the investigative process.

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

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

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

§159.204. *Complaint Processing.*

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the AMC named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff will:

- (1) assign the complaint a case number in the complaint tracking system; and
- (2) send written acknowledgement of receipt to the complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the AMC Act or Board rules that:

- (1) evidence serious deficiencies, including:
 - (A) Fraud;
 - (B) Identity theft;

(C) Unlicensed activity;

(D) Ethical violations;

(E) Violations of appraiser independence; or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

(2) were done:

(A) with knowledge;

(B) deliberately;

(C) willfully; or

(D) with gross negligence.

(c) [(b)] If the staff determines at any time that the complaint is not within the Board's jurisdiction, or that no violation exists, the complaint will be dismissed with no further processing. The Board or the Commissioner may delegate to staff the duty to dismiss complaints.

(d) [(e)] A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(1) may be investigated covertly; and

(2) will be referred to the appropriate prosecutorial authorities.

(e) [(d)] Staff may request additional information necessary to determine how to proceed with the complaint from any person.

(f) [(e)] As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation will be sent to the Respondent unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(g) [(f)] The Respondent must submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response must include the following:

(1) A copy of the appraisal report(s), if any, that is (are) the subject of the complaint;

(2) A copy of the documents or other business records associated with the appraisal report(s), incident(s), or conduct listed in the complaint, with the following signed statement attached to the response: I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY BUSINESS RECORD ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL BUSINESS RECORD, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS BUSINESS RECORD OR ALTERED. (SIGNATURE OF RESPONDENT);

(3) A narrative response to the complaint, addressing each and every item in the complaint;

(4) A list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) Any documentation that supports Respondent's position that was not in the original documentation, as long as it is conspicuously labeled as additional documentation and kept separate from the original documentation. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(h) [(g)] Staff will evaluate the complaint within three months of receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the AMC Act, Board rules or USPAP exists to pursue investigation and possible formal disciplinary action. If staff determines there is no jurisdiction, no violation exists, or there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (l) of this section, the complaint will be dismissed with no further processing.

(i) [(h)] A formal complaint will be opened and investigated by a staff investigator or peer investigative committee if:

(1) the informal complaint is not dismissed under subsection (h) of this section; or

(2) staff opens a formal complaint on its own motion.

(j) [(i)] Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(k) [(j)] The staff investigator or peer investigative committee assigned to investigate a formal complaint will prepare a report detailing all findings.

(l) [(k)] In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;

(D) A violation refers to a violation of any provision of the AMC Act, Board rules, or USPAP;

(E) "Minor deficiencies" is defined as violations of the AMC Act, Board rules, or USPAP which do not call into question the qualification of the AMC for licensure in Texas;

(F) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP which do call into question the qualification of the AMC for licensure in Texas;

(G) "Remedial measures" include training, auditing, or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If Respondent completes all remedial measures required in the agreement within a certain prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

(i) Whether it concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions imposed;

(iii) The length of time since the previous discipline;

(D) The difficulty or complexity of the incident at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The business operating history of the AMC, including:

(i) The size of the AMC's appraiser panel;

(ii) The length of time Respondent has been licensed as an AMC in Texas;

(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;

(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and

(v) Respondent's affiliation with other business entities;

(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and

(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.

(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

- (i) Dismissal;
- (ii) Dismissal with non-disciplinary warning letter;
- (iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures;

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(C) 1st Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(D) 2nd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

- (i) Dismissal;
- (ii) Dismissal with non-disciplinary warning letter;
- (iii) Contingent dismissal with remedial measures;
- (iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of \$1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(E) 2nd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(F) 2nd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;
- (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
- (vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
- (viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(G) 3rd Time Discipline Level 1--violations of the AMC Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;
- (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
- (vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
- (viii) Minimum of \$2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(H) 3rd Time Discipline Level 2--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

- (i) A period of suspension;
- (ii) A revocation;
- (iii) Remedial measures;
- (iv) Required adoption and implementation of written, preventative policies or procedures;
- (v) A probationary period with provisions for monitoring the AMC;
- (vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;
- (vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;
- (viii) Minimum of \$4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(I) 3rd Time Discipline Level 3--violations of the AMC Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

- (i) A revocation; and
- (ii) Minimum of \$7,000 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules, or the Act; each day of a continuing violation is a separate violation.

(J) 4th Time Discipline--violations of the AMC Act, Board rules or USPAP will result in a final order which imposes the following:

- (i) A revocation; and
- (ii) \$10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act, Board rules, or USPAP; each day of a continuing violation is a separate violation.

(K) Unlicensed AMC activity will result in a final order which imposes a \$10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.

(4) In addition, staff may recommend any or all of the following:

(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;

(C) Requiring additional reporting requirements;

(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and

(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act, Board rules, or USPAP.

(m) ~~(4)~~ Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1104.208(a)(3) must be signed by:

(1) ~~The Board Chair; [Approved by the Board; and]~~

(2) ~~Respondent; [Signed by:]~~

~~[(A) Respondent;]~~

~~[(B) Respondent's attorney, if respondent is represented;]~~

~~[(C) A representative of the Standards and Enforcement Services Division; and]~~

~~[(D) The Commissioner.]~~

(3) A representative of the Standards and Enforcement Services Division; and

(4) The Commissioner.

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 February 11, 2019.

TRD-201900414

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: March 24, 2019

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



TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §601.4, §601.8

The Texas Medical Disclosure Panel (panel) proposes amendments to §601.4 and §601.8, concerning informed consent of patients.

BACKGROUND AND PURPOSE

These amendments are proposed in accordance with the Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.4 contains the disclosure and consent form for medical treatment and surgical procedures, and §601.8 contains the disclosure and consent form for a hysterectomy.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §601.4 revise the disclosure and consent form for medical treatment and surgical procedures to make the document more reader-friendly and more readily understandable.

Proposed amendments to §601.8 revise the disclosure and consent form for a hysterectomy to update and clarify language, and to make the document more reader-friendly and more readily understandable.

Also, the agency name "Health and Human Services Commission" replaces the legacy agency name "Department of State Health Services" in §601.4 and §601.8.

FISCAL NOTE

Dr. Noah Appel, Chairman, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal impact to state or local governments as a result of administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

The panel has determined that during the first five years that the sections will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;

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

(4) the proposed rules will not affect fees paid to the agency;

(5) the proposed rules will not create new rules;

(6) the proposed rules will expand existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

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

Dr. Noah Appel has also determined that there will be no anticipated economic costs to small businesses, micro-businesses or rural communities required to comply with the amendments as proposed because regulated facilities already have an obligation to disclose risks and hazards related to medical care and surgical procedures. The amendments will not add additional costs.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There will be no economic costs to persons required to comply with the sections as proposed, and there will be no impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT

In addition, Dr. Noah Appel has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering these amended disclosure rules will be that patients are better informed about the risks and hazards related to medical and surgical procedures they are considering.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Pamela Adams, Manager, Facility Licensing Group, Health and Human Services Commission, Mail Code 2835, P.O. Box 149347, Austin, Texas

78714-9347, phone (512) 834-4571, by fax to (512) 834-4514, or by email to pamela.adams@hhsc.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*. If the last day to submit comments falls on a weekend or holiday, comments that are postmarked, shipped, or emailed before midnight on the following business day will be accepted.

STATUTORY AUTHORITY

The amendments are authorized under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendments implement the Texas Civil Practice and Remedies Code, Chapter 74.

§601.4. *Disclosure and Consent Form.*

(a) The Texas Medical Disclosure Panel adopts the following form which shall be used by a physician or health care provider to inform a patient or person authorized to consent for the patient of the possible risks and hazards involved in the medical treatments and surgical procedures named in the form. Except for the procedures shown in subsection (b) of this section, the following form shall be used for the medical treatments and surgical procedures described in §601.2 of this title (relating to Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A). Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Health and Human Services Commission [Department of State Health Services].

(1) English form.

Figure: 25 TAC §601.4(a)(1)
[Figure: 25 TAC §601.4(a)(1)]

(2) Spanish form.

Figure: 25 TAC §601.4(a)(2)
[Figure: 25 TAC §601.4(a)(2)]

(b) Informed consent for:

(1) radiation therapy shall be provided in accordance with §601.5 of this title (relating to Disclosure and Consent Form for Radiation Therapy);

(2) electroconvulsive therapy shall be provided in accordance with §601.7 of this title (relating to Informed Consent for Electroconvulsive Therapy);

(3) hysterectomy procedures shall be provided in accordance with §601.8 of this title (relating to Disclosure and Consent Form for Hysterectomy); and

(4) anesthesia and/or perioperative pain management (analgesia) procedures shall be in accordance with §601.9 of this title (relating to Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia)).

§601.8. *Disclosure and Consent Form for Hysterectomy.*

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in the hysterectomy surgical procedure named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §601.4(a) of this title (relating to Disclosure and Consent Form) for disclosure and consent relating to only hysterectomy procedures. Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Health and Human Services Commission [Department of State Health Services].

(1) English form.

Figure: 25 TAC §601.8(1)
[Figure: 25 TAC §601.8(1)]

(2) Spanish form.

Figure: 25 TAC §601.8(2)
[Figure: 25 TAC §601.8(2)]

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 February 7, 2019.

TRD-201900375

Noah Appel, M.D.

Chairman

Texas Medical Disclosure Panel

Earliest possible date of adoption: March 14, 2019

For further information, please call: (512) 776-6972



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 1. IMPLEMENTATION OF ASSESSMENT INSTRUMENTS

19 TAC §101.3011

The Texas Education Agency (TEA) withdraws the proposed amended §101.3011, concerning implementation and administration of academic content area assessment instruments, which appeared in the August 24, 2018, issue of the *Texas Register* (43 TexReg 5467).

The proposed amendment would have required Texas public school districts and open-enrollment charter schools to administer to students assessments in any subject and grade required by federal law but not administered by the TEA under Texas Education Code, §39.023, and would have specified the assessments to be given to certain students.

As part of its Every Student Succeeds Act State Plan, the TEA will request that the Texas Legislature appropriate funds begin-

ning in the 2019-2020 school year for high school students who completed state testing requirements prior to high school to take once either the ACT or the SAT to fulfill federal testing requirements. The TEA would then adopt additional administrative rules that will require all students to take appropriate assessments to be used for federal accountability. This plan is contingent on the legislature appropriating funds for this purpose.

In addition, the TEA will request a waiver of these testing requirements for the 2018-2019 school year. The TEA will provide local education agencies (LEAs) in Texas with notice and a reasonable opportunity to comment on this waiver request. Public notice of the waiver request, and the notification of a 30-day public comment period on the waiver, will be sent to LEAs and is published in the "In Addition" section of this issue of the *Texas Register*.

Filed with the Office of the Secretary of State on February 11, 2019.

TRD-201900418

Cristina De La Fuente-Valadez

Director, Rulemaking

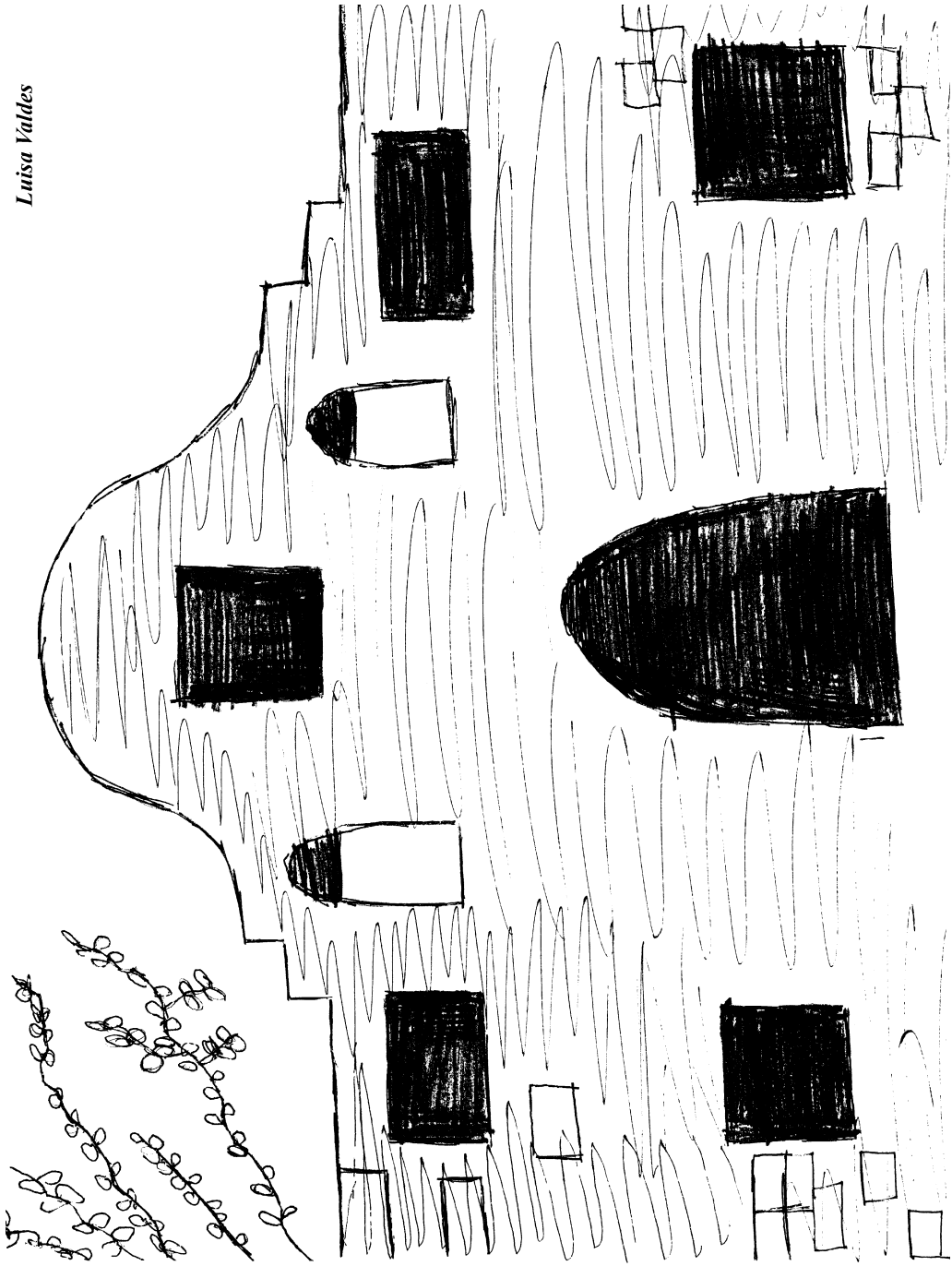
Texas Education Agency

Effective date: February 11, 2019

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



Luisa Valdes



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 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §§351.805, 305.821, 351.823, 351.833, 351.837

The Texas Health and Human Services Commission (HHSC) adopts amendments to §351.805, concerning State Medicaid Managed Care Advisory Committee; §351.821, concerning Value-Based Payment and Quality Improvement Advisory Committee; §351.823, concerning e-Health Advisory Committee; §351.833, concerning STAR Kids Managed Care Advisory Committee; and §351.837, concerning Texas Autism Council, with changes to the proposed text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5613). The rules will be republished because of the changes.

BACKGROUND AND JUSTIFICATION

HHSC initiated the rule amendments to further the work of these committees and council by expanding membership, extending the life of two committees, and preventing any perceived conflicts of interest.

COMMENTS

The 30-day comment period ended September 30, 2018.

During this period, HHSC received comments regarding the proposed rules from the STAR Kids Managed Care Advisory Committee and four individuals. A summary of comments relating to the rules and HHSC's responses follows.

Comment: In regards to §351.805(d)(1) and (2), a commenter recommends changing due dates of reports to the Executive Commissioner and Texas Legislature to be August 31st of each year to be consistent with the abolition date in §351.805(e) and the term date of appointments in §351.805(f)(4).

Response: HHSC declines to change the deadline for report submission. The committee can choose to submit reports before the December deadline.

Comment: A commenter believes §351.805 was intended to align the abolition date with the date under Texas Government Code §2110.008 (Duration of Advisory Committees), which would be August 31, 2021. The commenter recommends changing the abolition date in §351.805(e) from 2019 to 2021.

Response: HHSC has revised §351.805(e) to extend the life of the committee to December 31, 2019, but HHSC declines at this time to extend this committee beyond 2019. HHSC intends to review all advisory committees in 2019 and, as part of that review, will consider extending existing committees established under Texas Government Code §531.012. HHSC will propose rule amendments after the review is completed, and members of the public will have the opportunity to comment at that time.

Comment: With respect to §351.833 generally, a commenter states that HHSC developed the rule amendments in a vacuum with no input from advisory committee members.

Response: We do not understand this comment to suggest particular revisions to the proposed rule. In accordance with statutory requirements (Tex. Gov't Code §2001.029), HHSC has provided all interested persons an opportunity to comment on the rule.

Comment: With respect to §351.833 generally, a commenter states that the rules do not make sense given the fact that the committee is ending on December 31, 2019.

Response: We do not understand this comment to suggest particular revisions to the rule.

Comment: Commenters suggest amending §351.833(b) to read, "The STAR Kids Managed Care Advisory Committee advises HHSC on the establishment, implementation and ongoing performance of the STAR Kids managed care program, including program design and benefits, options for enhancing service coordination requirements and delivery, systemic improvements to concerns from families and providers, efficiency and quality of services, development of quality measures appropriate to the STAR Kids population, optimization of the STAR Kids Screening and Assessment instrument, best practice improvements, and other issues as requested by HHSC."

Response: HHSC generally believes the rule's statement of purpose is sufficient. HHSC will add additional language that speaks to program improvements, however. HHSC will amend §351.833(b) to read, "The STAR Kids Advisory Committee advises HHSC on the establishment and implementation of, and recommends improvements to, the STAR Kids managed care program."

Comment: Commenters request HHSC to amend §351.833(e) to provide for a two-year extension instead of a one-year extension. Commenters cite the amount of work that still exists, including the planned carve-in of intellectual or developmental disability (IDD) waiver services into STAR Kids.

Response: HHSC has revised §351.833(e) to extend the life of the committee through December 31, 2019, but HHSC declines at this time to extend the committee beyond 2019. HHSC intends to review all advisory committees in 2019 and, as part of

that review, will consider extending existing committees created under Texas Government Code §531.012. HHSC will propose rule amendments after the review is completed, and members of the public will have the opportunity to comment at that time.

Comment: Commenters request that HHSC amend §351.833(f)(2) as follows:

"(A) representatives from families whose children receive private duty nursing under the program, families whose children are recipients of IDD waivers, and families of children who receive mental and behavioral health services under the program;

(B) health care providers, including providers of mental and behavioral health care;

(C) providers of home and community-based services, including at least one private duty nursing provider, one pediatric therapy provider and one durable medical equipment provider;

(D) managed care organizations;

(E) advocates for children with special health care needs; and

(F) other stakeholders as the executive commissioner determines appropriate."

Response: HHSC agrees to change §351.833(f)(2) as commenters suggest, although HHSC has made what HHSC believes to be nonsubstantive revisions to the commenters' suggested language.

Comment: Commenters support amending §351.833(f)(3) to enlarge the size of the committee membership to 24 members, which the commenters believe allows for better representation of the diverse needs of children in STAR Kids. The commenters indicate, however, that the committee's current bylaws must be amended to reflect the higher number. Another commenter likewise notes the discrepancy between §351.833(f)(3) and the bylaws.

Response: HHSC does not understand these comments to suggest changes to the proposed rules. HHSC agrees, however, that committee bylaws will need to be reviewed in light of the amendments adopted in these rules.

Comment: Commenters request that §351.837 be revised to extend the life of the Texas Autism Council beyond August 31, 2019.

Response: HHSC has revised §351.837(e) to extend the life of the committee through December 31, 2019, but HHSC declines at this time to extend the committee beyond 2019. HHSC intends to review all advisory committees in 2019 and, as part of that review, will consider extending existing committees established under Texas Government Code §531.012. HHSC will propose rule amendments after the review is completed, and members of the public will have the opportunity to comment at that time.

HHSC made some revisions additional to the revisions made in response to public comment. First, HHSC extended the abolition date of all of the committees whose rules are amended here to December 31, 2019. (Two committees, the Value-Based Payment and Quality Improvement Advisory Committee and the e-Health Advisory Committee, are abolished four years from the date of creation, according to the current rule. HHSC established these committees on October 31, 2015, see (44 TexReg 7726) (Oct. 30, 2015), making the date of abolition October 31, 2019.) As mentioned earlier, HHSC intends to review all advisory committees in 2019 and, as part of that review, will consider extending existing committees established under Texas Government

Code §531.012. HHSC will propose rule amendments after the review is completed, and members of the public will have the opportunity to comment at that time. Second, in §351.805(f)(4), HHSC changed the number of years a member can serve to two years from three years to ensure members rotate while still having overlapping dates for continuity. Third, HHSC added a sentence to §351.805(f)(4) to limit the number of terms that a member can serve to no more than two terms. Fourth, HHSC added two sentences to §351.823(f)(3) to provide that individuals will normally serve one term, but they can apply to be appointed for a second two-year term, which can be served either consecutively or nonconsecutively. The sentences were added to limit the number of terms that a member can serve.

STATUTORY AUTHORITY

These amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority.

The amendments implement Texas Government Code Chapter 531, in particular Texas Government Code §531.012, which authorizes the Executive Commissioner of HHSC to establish and maintain advisory committees to consider issues related to the health and human services system.

§351.805. State Medicaid Managed Care Advisory Committee.

(a) Statutory authority. The State Medicaid Managed Care Advisory Committee (SMMCAC) is established in accordance with Texas Government Code §531.012.

(b) Purpose.

(1) The SMMCAC advises HHSC on the statewide operation of Medicaid managed care, including program design and benefits, systemic concerns from consumers and providers, efficiency and quality of services, contract requirements, provider network adequacy, trends in claims processing, and other issues as requested by the Executive Commissioner.

(2) The SMMCAC assists HHSC with Medicaid managed care issues.

(3) The SMMCAC disseminates Medicaid managed care best practice information as appropriate.

(c) Tasks. The SMMCAC makes recommendations to HHSC and performs other tasks consistent with its purpose.

(d) Reports.

(1) By December 31st of each fiscal year, the SMMCAC must file a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members' attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any rules that the committee recommended to HHSC;

(F) describes anticipated activities the committee will undertake in the next fiscal year;

(G) recommends amendments to this section, as needed; and

(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By December 31st of each even-numbered year, the committee must file a written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Abolition. The SMMCAC is abolished, and this section expires, December 31, 2019.

(f) Membership. The SMMCAC consists of an odd number, but no more than 23, members.

(1) Each member is appointed by the Executive Commissioner.

(2) The SMMCAC consists of representatives of the following categories:

(A) hospitals;

(B) managed care organizations and participating health care providers;

(C) primary care providers and specialty care providers;

(D) state agencies;

(E) low-income Medicaid recipients or consumer advocates representing low-income recipients;

(F) Medicaid recipients with intellectual, developmental and/or physical disabilities, or consumer advocates representing those recipients;

(G) parents of children who are Medicaid recipients;

(H) rural providers;

(I) advocates for children with special health care needs;

(J) pediatric health care providers, including specialty providers;

(K) long-term services and supports providers, including nursing facility providers and direct service workers;

(L) obstetrical care providers;

(M) community-based organizations serving low-income children and their families;

(N) community-based organizations engaged in perinatal services and outreach;

(O) Medicaid recipients who are 65 years of age or older;

(P) Medicaid recipients or family members who are using mental health services;

(Q) non-physician mental health providers participating in the Medicaid managed care program; and

(R) entities with responsibilities for the delivery of long-term services and supports or other Medicaid service delivery, including:

(i) independent living centers;

(ii) area agencies on aging;

(iii) aging and disability resource centers established under the Aging and Disability Resource Center initiative

funded in part by the federal Administration on Aging and the Centers for Medicare and Medicaid Services; and

(iv) community mental health and intellectual disability centers.

(3) The membership will be racially and geographically diverse.

(4) Except as necessary to stagger terms, each member is appointed to serve a term of two years, with an appropriate number expiring each August 31. A member can serve no more than two terms.

(g) Officers.

(1) The SMMCAC selects a chair and vice chair from among its members.

(2) Each officer serves until his or her committee term expires.

§351.821. *Value-Based Payment and Quality Improvement Advisory Committee.*

(a) Statutory authority. The Value-Based Payment and Quality Improvement Advisory Committee (Quality Committee) is established in accordance with Texas Government Code §531.012.

(b) Purpose. The Quality Committee provides a forum to promote public-private, multi-stakeholder collaboration in support of quality improvement and value-based payment initiatives for Medicaid, other publicly funded health services, and the wider health care system.

(c) Tasks. The Quality Committee performs the following tasks:

(1) studies and makes recommendations regarding:

(A) value-based payment and quality improvement initiatives to promote better care, better outcomes, and lower costs for publicly funded health care services;

(B) core metrics and a data analytics framework to support value-based purchasing and quality improvement in Medicaid/CHIP;

(C) HHSC and managed care organization incentive and disincentive programs based on value; and

(D) the strategic direction for Medicaid/CHIP value-based programs; and

(2) pursues other deliverables consistent with its purpose to improve quality and efficiency in state health care services as requested by the Executive Commissioner or adopted into the work plan or bylaws of the committee.

(d) Reports.

(1) By December 31st of each fiscal year, the Quality Committee files a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members' attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any rules that the committee recommended to HHSC;

(F) describes anticipated activities the committee will undertake in the next fiscal year;

(G) recommends amendments to this section, as needed; and

(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By December 1st of each even-numbered year, the committee submits a written report to the Executive Commissioner and Texas Legislature that:

(A) describes current trends and identifies best practices in health care for value-based payment and quality improvement; and

(B) provides recommendations consistent with the purposes of the Quality Committee.

(e) Date of abolition. The Quality Committee is abolished, and this section expires, on December 31, 2019.

(f) Membership.

(1) The Quality Committee is composed of 19 voting members appointed by the Executive Commissioner.

(A) HHSC solicits voting members from the following categories:

- (i) Medicaid managed care organizations;
- (ii) Regional Healthcare Partnerships;
- (iii) hospitals;
- (iv) physicians;
- (v) nurses;
- (vi) pharmacies;
- (vii) providers of long-term services and supports;
- (viii) academic systems; and
- (ix) members from other disciplines or organizations with expertise in health care finance, delivery, or quality improvement.

(B) The final composition of the committee is determined by the Executive Commissioner.

(C) The committee may include nonvoting, *ex officio* agency representatives as determined by the Executive Commissioner.

(2) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(3) Members are appointed to staggered terms so that the terms of approximately half the members expire on December 31st of each even-numbered year.

(4) Except as necessary to stagger terms, the term of each voting member is four years.

(g) Officers. The Quality Committee selects from its members a presiding officer and an assistant presiding officer.

(1) The presiding officer serves until December 31st of each odd-numbered year. The assistant presiding officer serves until December 31st of each even-numbered year.

(2) The presiding officer and the assistant presiding officer remain in their positions until the committee selects a successor;

however, the individual may not remain in office past the individual's membership term.

§351.823. *e-Health Advisory Committee.*

(a) Statutory authority. The e-Health Advisory Committee is established under Texas Government Code §531.012.

(b) Purpose. The committee advises the Executive Commissioner and Health and Human Services system agencies (HHS agencies) on strategic planning, policy, rules, and services related to the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services.

(c) Tasks. The committee:

(1) advises HHS agencies on the development, implementation, and long-range plans for health care information technology and health information exchange, including the use of electronic health records, computerized clinical support systems, health information exchange systems for exchanging clinical and other types of health information, and other methods of incorporating health information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care and population health;

(2) advises HHS agencies on incentives for increasing health care provider adoption and usage of an electronic health record and health information exchange systems;

(3) advises HHS agencies on the development, use, and long-range plans for telemedicine, telehealth, and home telemonitoring services, including consultations, reimbursements, and new benefits for inclusion in Medicaid telemedicine, telehealth, and home telemonitoring programs;

(4) makes recommendations to HHS agencies through regularly scheduled meetings and verbal or written recommendations communicated to HHSC staff assigned to the committee; and

(5) performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reports.

(1) By February of each year, the committee files an annual written report with the Executive Commissioner covering the meetings and activities in the immediate preceding calendar year. The report includes:

- (A) a list of the meeting dates;
- (B) the members' attendance records;
- (C) a brief description of actions taken by the committee;
- (D) a description of how the committee accomplished its tasks;
- (E) a summary of the status of any rules that the committee recommended to HHSC;
- (F) a description of activities the committee anticipates undertaking in the next fiscal year;
- (G) recommended amendments to this section; and
- (H) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) The committee also files an annual written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Date of abolition. The committee is abolished, and this section expires, on December 31, 2019.

(f) Membership. The committee is composed of no more than 24 members appointed by the Executive Commissioner.

(1) The committee includes representatives of HHS agencies, other state agencies, and other health and human services stakeholders concerned with the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services, including:

(A) at least two non-voting ex officio representatives from HHSC;

(B) at least one non-voting ex officio representative from the Texas Department of State Health Services;

(C) at least one representative from the Texas Medical Board;

(D) at least one representative from the Texas Board of Nursing;

(E) at least one representative from the Texas State Board of Pharmacy;

(F) at least one representative from the Statewide Health Coordinating Council;

(G) at least one representative of a managed care organization;

(H) at least one representative of the pharmaceutical industry;

(I) at least one representative of a health science center in Texas;

(J) at least one expert on telemedicine;

(K) at least one expert on home telemonitoring services;

(L) at least one representative of consumers of health services provided through telemedicine;

(M) at least one Medicaid provider or child health plan program provider;

(N) at least one representative from the Texas Health Services Authority established under Chapter 182, Texas Health and Safety Code;

(O) at least one representative of a local or regional health information exchange; and

(P) at least one representative with expertise related to the implementation of electronic health records, computerized clinical support systems, and health information exchange systems for exchanging clinical and other types of health information.

(2) When appointing members, the Executive Commissioner will consider the cultural, ethnic, and geographic diversity of Texas, including representation from at least 6 of the 11 Texas Health Service Regions as defined by the Texas Department of State Health Services in accordance with Texas Health and Safety Code §121.007 (www.dshs.state.tx.us/regions/state.shtm).

(3) Except as may be necessary to stagger terms, the term of office of each member is two years. Individuals will normally serve one term. An individual may apply and be appointed for a second two-year term, which may be served consecutively or nonconsecutively.

(A) Members are appointed for staggered terms so that the terms of half of the members expire on December 31st of each year.

(B) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(C) This paragraph does not apply to ex officio members, who serve at the pleasure of the Executive Commissioner.

(g) Officers. The committee selects from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer serves until July 1st of each even-numbered year. The assistant presiding officer serves until July 1 of each odd-numbered year.

(2) A member serves no more than two consecutive terms as presiding officer or assistant presiding officer.

§351.833. *STAR Kids Managed Care Advisory Committee.*

(a) Statutory authority. The STAR Kids Managed Care Advisory Committee (STAR Kids Advisory Committee) is established under Texas Government Code §531.012.

(b) Purpose. The STAR Kids Advisory Committee advises HHSC on the establishment and implementation of, and recommends improvements to, the STAR Kids managed care program.

(c) Tasks. The STAR Kids Advisory Committee makes recommendations consistent with its purpose to HHSC through regularly scheduled meetings and staff assigned to the committee.

(d) Reports.

(1) By December 31st of each fiscal year, the STAR Kids Advisory Committee must file a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members' attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any rules that the committee recommended to HHSC;

(F) describes anticipated activities the committee will undertake in the next fiscal year;

(G) recommends amendments to this section, as needed; and

(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By December 31 of each even-numbered year, the committee must file a written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Abolition. On December 31, 2019, the advisory committee is abolished and this section expires.

(f) Membership.

(1) The Executive Commissioner appoints the members of the STAR Kids Advisory Committee.

(2) The STAR Kids Advisory Committee may consist of:

(A) representatives from families whose children will receive private duty nursing, are IDD waiver recipients, or receive mental and behavioral health services under the program;

- (B) medical care providers;
- (C) providers of home and community-based services, including at least one private duty nursing provider, one durable medical equipment provider, and one pediatric therapy provider;
- (D) managed care organizations;
- (E) advocates for children with special health care needs; and
- (F) other stakeholders as the executive commissioner determines appropriate.

(3) The STAR Kids Advisory Committee may have no more than 24 members.

(4) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(g) Presiding officer.

(1) The committee selects from its members a presiding officer, and an assistant presiding officer at the discretion of the committee.

(2) The presiding officer serves until August 31st of each even-numbered year. The assistant presiding officer, if applicable, serves until August 31st of each odd-numbered year.

(3) A member serves no more than two consecutive terms as presiding officer or assistant presiding officer.

§351.837. *Texas Autism Council.*

(a) Statutory authority. The Texas Autism Council is established in accordance with HHSC's general authority to establish committees under Texas Government Code §531.012(a).

(b) Purpose. The Texas Autism Council advises and make recommendations to HHSC and the Executive Commissioner to ensure that the needs of persons of all ages with autism spectrum disorder and their families are addressed and that all available resources are coordinated to meet those needs.

(c) Tasks. The Texas Autism Council performs the following activities:

(1) makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee; and

(2) other tasks consistent with its purpose that are requested by the Executive Commissioner.

(d) Reporting requirements. The Texas Autism Council performs reporting activities assigned by Texas Human Resources Code §114.008.

(e) Abolition. The Texas Autism Council is abolished, and this section expires, on December 31, 2019.

(f) Membership.

(1) The Texas Autism Council consists of no more than 24 members.

(A) Each public member is appointed by the Executive Commissioner.

(B) Each ex officio member is appointed by the commissioner or executive head of the represented state agency.

(C) Each member must have knowledge of and an interest in autism spectrum disorder.

(D) Texas Autism Council membership is allocated as follows:

(i) The majority of public members are family members of a person with autism spectrum disorder.

(ii) A representative from each of the following state agencies will serve as an ex officio member:

(I) Texas Department of Aging and Disability Services;

(II) Texas Department of Family and Protective Services;

(III) Texas Department of State Health Services;

(IV) Texas Health and Human Services Commission;

(V) Texas Workforce Commission; and

(VI) Texas Education Agency.

(2) Except as necessary to stagger terms, each public member is appointed to serve a term of two years.

(3) An ex officio member serves in an advisory capacity only and may not:

(A) serve as an officer; or

(B) vote.

(g) Presiding officer.

(1) The Texas Autism Council selects a presiding officer from among its members.

(2) Unless reelected, the presiding officer serves a term of one year.

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 February 5, 2019.

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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 707-6101



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) adopts amendments to §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. Section 3.25 is adopted without

changes and §3.26 and §3.27 are adopted with changes to the proposed text as published in the November 30, 2018, issue of the *Texas Register* (43 TexReg 7747).

The Commission received 10 comments. Six associations submitted comments: National Association of Royalty Owners, Texas Chapter (NARO-Texas); Permian Basin Petroleum Association (PBPA); Texas Independent Producers and Royalty Owners Association (TIPRO); Texas Land & Mineral Owners Association (TLMA); Texas Oil and Gas Association (TXOGA); and Texas Press Association (TPA). The remaining comments were submitted by Apache Corporation (Apache), BPX Energy (BPX), Encana Oil & Gas (USA) Inc. (Encana), and the General Land Office (GLO).

First, several comments expressed concern about removing notice requirements or automatically granting commingling permits. The Commission would like to clarify how the rule revisions and corresponding permit process will impact notice. As stated in the proposal preamble, the amendments in new §3.26(b) 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. The proposal preamble did not fully explain that under current §3.26, notice is not required in those instances. Current §3.26(b) states, "Upon written application, the commission may grant approval for surface commingling administratively when any one of the following conditions is met: (A) [t]he 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) [p]roduction from each tract and each commission-designated reservoir is separately measured and therefore there is no commingling of separate interests; or (C) [w]hen the tracts or commission-designated reservoirs do not have identical working interest and royalty interest ownership in identical percentages and the 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 . . ." Therefore, under the current rule, notice is only required when the tracts or commission-designation reservoirs do not have identical working interest and royalty interest ownership in identical percentages. However, the current exception application (Form P-17) instructions conflict with the rule language and operators often provide notice pursuant to the form instructions even though notice is not required by the rule. Outside of the rulemaking process, Commission staff is amending the Form P-17 such that its instructions no longer conflict with the rule.

The amendments do not change the notice requirements for a commingle permit. Notice is still required when an operator applies to commingle and the subject tracts or commission-designated reservoirs do not have identical working interest and royalty interest ownership in identical percentages. Just as before, notice is not required when (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; and (2)

the tracts and Commission-designated reservoirs have identical working interest and royalty interest ownership in identical percentages. Under the amendments as proposed and adopted, an operator in these two situations does not need a rule exception and does not have to pay an exception fee. This is different from the current rule, which requires an exception and a fee for all types of commingling.

Apache and PBPA commented that the proposed Form P-17A should be introduced through the form approval and comment process. As mentioned above, Commission staff has proposed amendments to the Form P-17. Commission staff has also proposed a new form, Form P-17A. Both forms are currently posted on the Commission's website for public comment.

Apache and PBPA also suggested that where commingling occurs only because of the Commission practice of assigning unique lease numbers for wells with identical ownership that the Commission consider these situations not commingling and, therefore, not require a commingle permit. The Commission declines to adopt this interpretation of commingling as it may be inconsistent with governing statutes.

Apache and PBPA support the removal of current §3.26(d)(4). The Commission appreciates this support.

BPX, TIPRO, and TXOGA asked that the Commission ensure the amendments will not conflict with an operator's ability to make annual gas deliverability testing optional. The amendments do not change existing requirements and procedures related to testing. Section 3.28 (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported) states, "Notwithstanding any of the provisions in this section on frequency of testing, gas wells commingling liquid hydrocarbons before metering must comply with the testing provisions applicable to such wells." Based on this provision, an operator who meters a gas well prior to commingling is typically given an administrative exception to the testing requirements in §3.28. The amendments to §§3.25, 3.26, and 3.27 do not remove the opportunity for an administrative exception.

TIPRO and TXOGA also asked that the rules clarify that gas wells filed on the Form P-17A are exempt from semiannual well testing because they are measured prior to commingling. The Commission does not agree with this entire statement and disagrees to make any changes to the rule. The Commission agrees that if an operator files the Form P-17A because it is measuring the production stream of the gas well separately before combining it with a stream from another tract or reservoir pursuant to §3.26(b)(1), then the operator is eligible for the administrative exception discussed above. However, if the operator files the Form P-17A under §3.26(b)(2), then semiannual testing may still be required.

Similarly, TXOGA and Encana requested that the rules clarify that semiannual oil tests are not required when the Form P-17A is filed for an oil well. The Commission disagrees and declines to make any changes. The amendments do not change existing testing requirements for oil wells.

TIPRO and TXOGA also expressed concern that operators could be forced to record the commingling permit number on production reports and certain signs, that some wells may be filed under Form P-17 and others under Form P-17A, and that there could be operators with two commingling permit numbers where there was once only one, all of which contributes to costly signage and production reporting revisions. Apache and PBPA noted these concerns and disagree, stating they do not feel posting

P-17 or P-17A numbers is overly burdensome given the Commission's longstanding practice of allowing commingling permits to be modified, upon proper application, without issuing new permit numbers. The Commission declines to adopt any changes to the proposed language. The Commission will issue one commingle permit number whenever possible to reduce reporting costs and enable tracking of commingle permits filed under Form P-17 and P-17A over time. The Commission agrees with Apache and PBPA that in the event two permits are necessary, posting both numbers is not overly burdensome. The Commission will continue to allow modification of commingle permit applications without issuing a new permit number.

The GLO commented that it relies on notification from operators to assist with its fiduciary duty to review and approve surface commingling of State oil and gas leases. The GLO is responsible for studying the proposed design of commingling facilities to ensure payment occurs pursuant to the lease, even where the royalty interests among a group of commingled tracts are identical. The GLO states, "removing notice requirements and automatically granting commingling permits in all cases where production has been 'measured' (irrespective of the method or relative accuracy of measurement), could result in fewer operators obtaining commingling authority from the GLO, as required by 31 TAC §9.35, in a timely manner."

The Commission appreciates the GLO's input. The amendments do not change an operator's obligation to comply with other law, such as 31 TAC §9.35. Also, as noted above, the amendments only clarify existing notice requirements such that notice is not required when an operator is measuring prior to commingling or the ownership interests are identical. Even when notice is not required, the amendments still require an operator to obtain a permit from the Commission and report the commingle permit number on its production reports. These continued reporting requirements provide a mechanism to confirm compliance with other law.

Similarly, the GLO expressed concern that lack of notice would allow the Commission's Oil and Gas Director to authorize measurement methodologies that have not achieved industry consensus represented by American Petroleum Institute or American Gas Association standards, or which conflict with those standards.

The Commission understands this concern; however, the ability to obtain approval to use an alternate measurement technology (found in §3.26(a)(4)) was not addressed in the proposal. Therefore, any changes to that provision would be outside the scope of this rulemaking.

The GLO also commented that the opacity of some proposed allocation methodologies makes them difficult to audit by royalty owners. Automatic approval of commingling permits without notice of annual or semi-annual well testing allocation measurement systems is not always in the best interest of royalty owners. The Commission understands this concern, and though notice requirements are not changing, the Commission adopts §3.26 with a change to clarify that allocation is required whether an operator files Form P-17A or Form P-17. This clarification, found in §3.26(e), will ensure that allocation methods continue to be noted on the applicable forms, which will be available on the Commission's website for inspection and audit by royalty owners.

The GLO requested that the certification that appears on the current Form P-17 be included in any new or revised forms adopted

pursuant to the rule amendments. The Commission included the certification on the Form P-17A and Form P-17, which are currently posted on the Commission's website for comment.

NARO-Texas and TLMA expressed concerns about the lack of notice hindering royalty owners' ability to determine when production stops on one lease, even when commingled production comes from leases with identical ownership interests. As noted above, the amendments do not change the current notice requirements. Notice of commingling applications may decrease, but if so, only because operators previously sent notice according to the Form P-17, which, due to unclear instructions, was interpreted by operators to require notice even when not required by the rule. Further, as noted above, a commingle permit number, whether issued through the Form P-17A or Form P-17, continues to be required on an operator's monthly production report. In addition, the amendments do not alter existing testing requirements. Therefore, the mechanisms currently in place to provide royalty owners relevant information regarding when production stops on one lease will still be available after the amendments are in effect.

NARO-Texas also commented that the Commission could revise §3.26(b)(1) to clarify that one-time measurement of production does not suffice. The Commission has always interpreted the rule in this manner and the amendments do not change that interpretation. Therefore, the Commission declines to adopt any changes. To clarify, the term "before" in the phrase "measures the production stream from each tract and each Commission-designated reservoir separately before combining . . ." means the production stream must be measured upstream of (i.e., before) the commingling.

NARO-Texas expressed concerns that proposed §3.26(f), now §3.26(g), could be used to correct permits where commingling has occurred contrary to a permit and no notice would be given. The Commission declines to make any changes. This situation could occur under the current rule and forms. However, this provision ensures the Commission has complete and accurate records of operations related to commingling.

NARO-Texas commented that proposed §3.26(g) could result in commingling changes through field rule amendments, a process that does not provide all stakeholders notice and an opportunity to comment. Upon review, the Commission has determined that subsection (g) is not necessary as it merely reminds operators that if field rules apply then operators must comply with those rules.

Finally, the Texas Press Association commented that the proposed publication requirements, which apply when an operator is unable to provide notice by certified mail to working and royalty interest owners, would significantly harm citizens' right to know about management of oil and gas resources in their communities and limit the ability for individuals with working or royalty interests from safeguarding their rights. The Commission disagrees. Although some Commission notice requirements aim to notify the general public of oil and gas activity in their communities, the notice requirements applicable to commingling permits focus on working and royalty interest owners only. Most of these individuals will be notified by the operator directly via certified mail, as required by §3.26(d). The notice by publication procedure will only be used when an operator is unable, after due diligence, to provide notice via certified mail. The Commission has no evidence that in these instances reducing the frequency of published notices from once each week for four consecutive weeks to once each week for two consecutive weeks will harm working

and royalty interest owners' rights. Further, the Commission received no comments from working and royalty interest owners or associations representing those individuals that express concern over the reduction in published notice.

The Commission adopts 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 amendments in new §3.26(b) 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 proposed new Form P-17A. An operator who falls into one of the instances in which an exception is no longer required will file the Form P-17A to obtain a commingle permit.

The 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) are still required to seek an exception by filing Form P-17, which will be revised to reflect the rule amendments. Therefore, the Commission adopts 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 adopts 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 Commission adopts the amendments with a change to §3.26(d)(3). The proposal preamble stated that operators applying for a commingle permit would still be required to comply with all applicable commingling requirements. This includes existing requirements regarding reasonable allocation. To make that clear, the requirements currently found in §3.26(b)(3) and proposed in §3.26(d)(3), will be moved to new subsection (e). Thus, current allocation requirements will continue to apply to all commingling permits, whether filed under the Form P-17A or Form P-17. The remaining subsections of §3.26 are re-lettered accordingly: proposed subsection (e) is now adopted as subsection (f); and proposed subsection (f) is now adopted as subsection (g). As described above, proposed subsection (g) is not part of the rule as adopted, and therefore, subsections (h) and (i) are now adopted as proposed.

The amendments to §3.26(d)(4) and new subsection (f) 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 amendments to §3.26(g) 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.

Proposed §3.26(g), which contained language from current §3.26(b)(4), was determined unnecessary and is not included in the adopted amendments.

The Commission adopts amendments to §3.25 and §3.27 to reflect the changes to §3.26. The 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 amendments to §3.27 authorize surface commingling if done in accordance with §3.26. To ensure compliance with all applicable provisions of §3.26, Section §3.27(e) is adopted with a change: specific provisions referencing subsections of §3.26 are replaced with a general reference to §3.26.

Other amendments in §§3.25 - 3.27 are nonsubstantive clarifications.

The Commission adopts 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.

§3.26. 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 separating device shall be kept in place as long as a necessity for it exists, and its use shall not be discontinued without the consent of the 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 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 or its delegate, is being used to effect custody transfer.

(4) For 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) If an operator does not meet the requirements of subsection (b) of this section, the 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 reservoir or from one or more tracts of land producing from different Commission-designated reservoirs in order to prevent waste, to promote conservation, or to protect correlative rights.

(1) Administrative approval. After receipt of a completed Form P-17, the Commission may grant approval for surface commingling administratively when the tracts or Commission-designated reservoirs do not have identical working interest and royalty interest ownership in identical percentages and the 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) a method of allocating production to ensure the protection of correlative rights, in accordance with subsection (e) of this section; and

(B) 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) 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 notice of application has been published once a week for two 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 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, the applicant may request a hearing on the application. The Commission shall give notice of the hearing to all working interest and royalty interest owners. The Commission may permit the commingling if the applicant demonstrates that the proposed commingling will protect the rights of all interest owners in accordance with subsection (e) of this section and will prevent waste, promote conservation or protect correlative rights.

(e) 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.

(1) 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 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 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).

(2) Operators may test commingled wells annually after approval by the Commission or the 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.

(3) Nothing in this section prohibits allocations based on more frequent well tests than the semi-annual well test set out in paragraph (1) of this subsection. Additional tests used for allocation do not have to be filed with the Commission but must be available for inspection at the request of the Commission, working interest owners or royalty interest owners.

(4) 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.

(f) 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).

(g) 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.

(h) 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) 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 production reports, the operator may, at the operator's 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 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 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 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 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. For 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 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. Exceptions to this provision may be granted by the 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 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 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 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 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, 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 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 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 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 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 adoption and found it to be a valid exercise of the agency's legal authority.

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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.315

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.315 ("Mega Millions" Draw Game Rule), with changes to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8526). The purpose of the amendments is to facilitate the potential future sale of Mega Millions tickets using Commission-approved third-party point-of-sale systems (in-lane sales) by removing the requirement that the drawing date be printed on the ticket, updating language regarding a player's selection of a Quick Pick, and making other conforming and non-substantive changes, including a recent clarification by the Multi-State Lottery Association regarding cancellation of plays. These changes complement rule amendments adopted by the Commission in December 2017 that also facilitated in-lane sales, but ongoing product development has necessitated small, additional updates to the rule language. The December 2017 rule amendment order noted that the term "third-party point-of-sale systems" refers to the industry terminology used by traditional brick and mortar retailers, such as grocery stores and chain retail stores, to describe their self-contained equipment that performs sales-related tasks at the in-lane check-out counter. These point-of-sale systems are basically cash registers at the checkout counter utilized by the retailers' sales clerks, or self-checkout terminals. A definition of "third-party point-of-sale systems" is already included in the Commission's rules at 16 TAC §401.301(50) and states these systems do not include any gambling device.

The Commission received written comments on the proposed amendments from a representative of the Kickapoo Traditional Tribe of Texas.

COMMENT SUMMARY: The Tribe objects to the term "computer gaming system" in proposed changes to §401.315(c)(3) and §401.317(c)(3) regarding Play cancellations, because this term is not defined in the Commission's rules. The Tribe suggests the Commission instead should use the term "Lottery gaming system", which is defined in Commission Rule 401.301(24) as "The commission or commission's vendor's computer sys-

tem consisting of terminals, central processing equipment, and a communication network."

COMMISSION RESPONSE: The Commission agrees with the comment and has made this change to the adopted rule.

The rule amendments are adopted under the Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The adopted amendments implement Texas Government Code, Chapter 466.

§401.315. *"Mega Millions" Draw Game Rule.*

(a) Mega Millions. The Multi-State Lottery Association ("MUSL") has entered into an Agreement ("Cross-Sell Agreement") with those U.S. lotteries operating under an agreement to sell a draw game known as Mega Millions ("Mega Millions Lotteries") to permit the MUSL Party Lotteries who are members of the MUSL Mega Millions Product Group ("Product Group"), including the Texas Lottery Commission (commission), to sell the Mega Millions lottery game. The purpose of the Mega Millions game is the generation of revenue for Mega Millions Lotteries and Product Group members participating under the Cross-Sell Agreement, through the operation of a specially designed multi-jurisdiction lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. The Mega Millions game is authorized to be conducted by the commission executive director (executive director) under the conditions of the Cross-Sell Agreement, MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. In this regard, the executive director is authorized to issue such further instructions and directives as may be necessary to conform to the conduct and play of the Mega Millions game to the requirements of the MUSL rules and the Cross-Sell Agreement, if, in the opinion of the executive director, such instructions, directives, and procedures are in conformance with state law. To be clear, the authority to participate in the Mega Millions game is provided to the commission by MUSL through the Cross-Sell Agreement. The conduct and play of the Mega Millions game must conform to the Product Group's Mega Millions game rules ("MUSL MM Rules"). Further, if a conflict arises between this section and §401.304 of this chapter, this section shall have precedence. In addition to other applicable rules contained in Chapter 401, this section and definitions herein apply unless the context requires a different meaning or is otherwise inconsistent with the intent of the MUSL MM Rules adopted by the Product Group.

(b) Definitions. In addition to the definitions provided in §401.301 of this subchapter (relating to General Definitions), and unless the context in this section otherwise requires, the following definitions apply.

(1) "Agent" or "retailer" means a person or entity authorized by the commission to sell lottery Plays.

(2) "Drawing" refers collectively to the formal draw event for randomly selecting the winning numbers that determine the number of winning Plays for each prize level of the Mega Millions game and Megaplier Promotion.

(3) "Game ticket" or "ticket" means an acceptable evidence of Play, which is a ticket produced in a manner that meets the specifications defined in the MUSL rules or the rules of each Selling Lottery, and is a physical representation of the Play or Plays sold to the player as described in subsection (g) of this section (Ticket Validation).

(4) "Just the Jackpot™ Play" ("JJ Play") shall refer to a wager purchased which includes two (2) Plays as part of the Just the Jackpot Promotion as described in subsection (l) of this section.

(5) "Megaplier Plays" shall refer to Plays purchased as part of the Megaplier Promotion described in subsection (k) of this section.

(6) "Mega Millions Lotteries" refers to those lotteries that have joined under the Mega Millions Lottery Agreement and that have entered into the Cross-Sell Agreement with MUSL for the selling of the Mega Millions game by the Product Group. "Mega Millions Finance Committee" refers to a Committee of the Mega Millions Lotteries that determines the Grand Prize amount (cash value option and annuity).

(7) "Mega Millions Plays" ("MM Plays") shall refer to Plays purchased as part of the Mega Millions game, but shall not include JJ Plays or Megaplier Plays.

(8) "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the MUSL Party Lotteries.

(9) "MUSL Board" means the governing body of the MUSL, which is comprised of the chief executive officer of each Party Lottery.

(10) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that has joined MUSL and, in the context of the Product Group rules, has joined in selling the games offered by the Product Group. "Selling Lottery" or "Participating Lottery" shall mean a state lottery or lottery of a political subdivision or entity that is participating in selling the Mega Millions game and that may be a member of either the Product Group or the Mega Millions Lotteries.

(11) "Play" means a set of six (6) numbers, the first five (5) from a field of seventy (70) numbers and the last one (1) from a field of twenty-five (25) numbers, that appear on a ticket and are to be played by a player in the game. As used in this section, unless otherwise indicated, "Play" includes both Mega Millions Plays ("MM Plays") and Just the Jackpot Plays ("JJ Play"). "Megaplier Plays" are separately described in subsection (k) of this section.

(12) "Playslip" means a physical or electronic means by which a player communicates their intended Play selection to the retailer as defined and approved by the commission. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(13) "Prize" means an amount paid to a person or entity holding a winning ticket. The terms "Grand Prize" or "Jackpot" may be used interchangeably and shall refer to the top prize in the Mega Millions game. "Advertised Grand Prize" or "Advertised Jackpot" shall mean the estimated annuitized Grand Prize amount as determined by the Mega Millions Finance Committee and communicated through the Selling Lotteries prior to the next Mega Millions Drawing. The Advertised Grand Prize is not a guaranteed prize amount and the actual Grand Prize amount may vary from the advertised amount, except in circumstances where there is a guaranteed Grand Prize amount as described in subsection (f)(1) of this section.

(14) "Product Group" means the MUSL Party Lotteries who are members of the MUSL Mega Millions Product Group and who offer the Mega Millions game product pursuant to the terms of the Cross-Sell Agreement between MUSL and the Mega Millions Lotteries, and in accordance with the Multi-State Lottery Agreement and the MUSL MM Rules.

(15) "Set Prize" or "low-tier prize" means all other prizes, except the Grand Prize and, except in instances outlined in this section,

or the MUSL MM Rules, will be equal to the prize amount established by the MUSL Board for the prize level.

(16) "Terminal" means a device authorized by the commission for the purpose of issuing Mega Millions game tickets and as defined in §401.301 (General Definitions) of this chapter.

(17) "Winning Numbers" means the indicia or numbers randomly selected during a Drawing event which shall be used to determine the winning Plays for the Mega Millions game contained on a game ticket.

(c) Game Description. Mega Millions is a five (5) out of seventy (70) plus one (1) out of twenty-five (25) lottery game drawn on the day(s), time(s) and location(s) as determined by the Mega Millions Lotteries, and which pays the Grand Prize, at the election of the player made in accordance with this section, or by a default election made in accordance with this section, either on a graduated annuitized annual pari-mutuel basis or as a cash value option using a rate determined by the Mega Millions Finance Committee on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a single payment basis. During the Drawing event, five (5) numbers shall be drawn from the first set of seventy (70) numbers, and one (1) number shall be drawn from the second set of twenty-five (25) numbers, which shall constitute the Winning Numbers.

(1) Mega Millions Play. To play Mega Millions, a player shall select (or request a Quick Pick) five (5) different numbers, from one (1) through seventy (70) and one (1) additional number from one (1) through twenty-five (25). The additional number may be the same as one of the first five numbers selected by the player. MM Plays can be purchased for two dollars (U.S. \$2.00), including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery Play. Plays may be purchased from a Party Lottery approved sales outlet in a manner as approved by the Party Lottery and in accordance MUSL rules.

(2) Claims. A ticket shall be the only proof of a game Play or Plays and is subject to the validation requirements set forth in subsection (g) of this section. The submission of a winning ticket to the commission or its authorized agent shall be the sole method of claiming a prize or prizes. A playslip has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected.

(3) Cancellations Prohibited. In all instances, a Play recorded on the Lottery gaming system may not be voided or cancelled by returning the ticket to the selling agent or to the commission, including tickets that are misprinted, illegible, printed in error, or for any reason not successfully transferred to an authorized selling entity or player. A Selling Lottery may develop an approved method of compensating retailers for Plays that are not transferred to a player for a reason acceptable to the Selling Lottery and not prohibited by the Mega Millions Product Group. No Play that is eligible for a prize can be returned to the commission for credit. Plays accepted by retailers as returned Plays and which cannot be re-sold shall be deemed owned by the bearer thereof.

(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the Play or Plays.

(5) Entry of Plays. Plays may only be entered manually using the lottery retailer terminal keypad or touch screen, by means of a commission-approved playslip, or by such other means as approved

by the commission, including entry using authorized third-party point-of-sale ("POS") systems. Retailers shall not permit the use of playslips that are not approved by the commission. Retailers shall not permit any device to be physically or wirelessly connected to a lottery terminal to enter Plays, except as approved by the commission. A ticket generated using a selection method that is not approved by the commission is not valid. A selection of numbers for a Play may be made only if the request is made in person. Acceptable methods of Play selection may include:

- (A) using a self-service terminal;
- (B) using a playslip;
- (C) using a previously-generated "Mega Millions" ticket provided by the player;
- (D) selecting a Quick Pick;
- (E) requesting a retailer to manually enter numbers; or
- (F) using a QR code generated through a Texas Lottery Mobile Application offered and approved by the commission.

(6) Maximum Purchase. The maximum number of consecutive drawings on a single Play purchase is ten (10).

(7) Subscription sales. A subscription sales program may be offered, at the discretion of the executive director.

(d) Mega Millions Prize Pool. The prize pool for all prize categories offered by the Party Lotteries shall consist of up to fifty-five percent (55%) of each Drawing period's sales, inclusive of any specific statutorily-mandated tax of a Party Lottery to be included in the price of a MM Play, and inclusive of contributions to the prize pool accounts and prize reserve accounts, but may be higher or lower based upon the number of winning Plays at each prize level, as well as the funding required to meet a guaranteed Annuity Grand Prize as may be required by subsection (f)(1) of this section.

(1) Mega Millions Prize Pool Accounts and Prize Reserve Accounts. The Product Group shall set the contribution rates to the Prize Pool and Prize Reserve Accounts established by this section.

(A) The following Prize Reserve Account for the Mega Millions game is hereby established: the Prize Reserve Account (PRA) which is used to guarantee the payment of valid, but unanticipated, Grand Prize claims that may result from a system error or other reason, to fund deficiencies in the Set-Aside Pool, and to fund pari-mutuel prize deficiencies as defined and limited in subsections (d)(3)(A) and (k)(9)(B)(i) of this section.

(B) The following Prize Pool Accounts for the Mega Millions game are hereby established:

(i) The Grand Prize Pool (GPP), which is used to fund the current Grand Prize;

(ii) The Set Prize Pool (SPP), which is used the fund the Set Prizes. The SPP shall hold the temporary balances that may result from having fewer than expected winners in the Set Prize (aka low-tier prize) categories. The source of the SPP is the Party Lottery's weekly prize contributions less actual Set Prize liability; and

(iii) The Set-Aside Pool (SAP), which is used to fund the payment of the awarded minimum starting Annuity Grand Prizes and the minimum Annuity Grand Prize increase, if necessary (subject to the limitations in this section or the MUSL MM Rules), as may be set by the Product Group. The source of the SAP funding shall accumulate from the difference between the amount in the Grand Prize Pool at the time of a Grand Prize win and the amount needed to fund Grand Prize payments as determined by the Mega Millions Lotteries.

(C) The above Prize Reserve Account shall have maximum balance amounts or balance limiter triggers that are set by the Product Group and are detailed in the *Comments* to MUSL MM Rule 28. The maximum balance amounts and balance limit triggers are subject to review by the MUSL Board Finance and Audit Committee. The Finance and Audit Committee shall have two weeks to state objections, if any, to the approved maximum balance amounts or balance limiter triggers. Approved maximum balance amounts or balance limiter triggers shall become effective no sooner than two weeks after notice is given to the Finance and Audit Committee and no objection is stated or sooner if the Committee affirmatively approves the maximum balance amounts or balance limiter triggers. The Product Group may appeal the Committee's objections to the full Board. Group approved changes in the maximum balance amounts or balance limiter triggers set by the Product Group shall be effective only after the next Grand Prize win.

(D) The contribution rate to the GPP from MM Plays shall be 37.6509% of sales. An amount up to five percent (5%) of a Party Lottery's sales, including any specific statutorily mandated tax of a Party Lottery to be included in the price of a lottery play, shall be added to a Party Lottery's Mega Millions Prize Pool contribution and placed in trust in one or more prize pool and prize reserve accounts held by the Product Group at any time that the Party Lottery's share of the PRA is below the amounts designated by the Product Group. Details shall be noted in the *Comments* to MUSL MM Rule 28.

(E) The Product Group may determine to expend all or a portion of the funds in the prize pools (except the GPP) and the prize reserve accounts:

(i) for the purpose of indemnifying the Party Lotteries in the payment of prizes to be made by the Selling Lotteries; and

(ii) for the payment of prizes or special prizes in the game, limited to prize pool and prize reserve contributions from lotteries participating in the special prize promotion, subject to the approval of the Board's Finance & Audit Committee or that Committee's failure to object after given two weeks' notice of the planned action, which actions may be appealed to the full Board by the Product Group.

(F) The prize reserve shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and sales percentage shares of the Party Lotteries.

(G) A Party Lottery may contribute to its sales percentage share of prize reserve accounts over time, but in the event of a draw down from a reserve account, a Party Lottery is responsible for its full sales percentage share of the prize reserve account, whether or not it has been paid in full.

(H) Any amount remaining in the Mega Millions prize pool accounts or prize reserve accounts when the Product Group declares the end of the game shall be returned to the lotteries participating in the prize pool and prize reserve accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game, or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(2) Expected Prize Payout Percentages. The Grand Prize payout shall be determined on a pari-mutuel basis. Except as otherwise provided in this section, all other prizes awarded shall be paid as single payment prizes. All prize payouts are made with the following expected prize payout percentages, which does not include an additional amount held in prize reserves, although the prize payout percentages per draw may vary:

Figure: 16 TAC §401.315(d)(2) (No change.)

(A) The Grand Prize amount shall be divided equally by the number of MM Plays and JJ Plays winning the Grand Prize.

(B) The SPP (for payment of single payment prizes of one million dollars (\$1,000,000.00) or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

(3) Pari-mutuel Prize Determinations. Except as otherwise provided for in subparagraph (C) of this paragraph below:

(A) If the total of the Mega Millions Set Prizes (as multiplied by the respective Megaplier multiplier, if applicable) awarded in a drawing exceeds the percentage of the prize pool allocated to the Mega Millions Set Prizes, then the amount needed to fund the Mega Millions Set Prizes, including Megaplier prizes, awarded shall be drawn from the following sources, in the following order:

(i) the amount available in the SPP and the Megaplier Prize Pool, if any;

(ii) an amount from the PRA, if available, not to exceed forty million dollars (\$40,000,000.00) per drawing.

(B) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes, including Megaplier prizes, then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, including Megaplier prizes, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize shall become a pari-mutuel prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning MM Plays in proportion to their respective prize percentages. Mega Millions and Megaplier prizes will be reduced by the same percentage.

(C) By agreement with the Mega Millions Lotteries, the Mega Millions Lotteries shall independently calculate their set pari-mutuel prize amounts. The Party Lotteries and the Mega Millions Lotteries shall then agree to set the pari-mutuel prize amount for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(4) Except as may be required by subsection (f)(1) of this section, the official advertised Grand Prize annuity amount is subject to change based on sales forecasts and/or actual sales.

(5) Subject to the laws and rules governing each Party Lottery, the number of prize categories and the allocation of the prize fund among the prize categories may be changed at the discretion of the Mega Millions Lotteries, for promotional purposes. Such change shall be announced by Mega Millions Lotteries.

(e) Probability of Winning Mega Millions Prizes. The following table sets forth the probability of winning and the probable distribution of winning Plays in and among each prize category for MM Plays, based upon the total number of possible combinations in Mega Millions.

Figure: 16 TAC §401.315(e) (No change.)

(f) Mega Millions Prize Payment.

(1) Mega Millions Grand Prize. The prize money allocated from the current Mega Millions prize pool for the Grand Prize, plus any previous portions of prize money allocated to the Grand Prize category in which no matching MM Plays or JJ Plays were sold will be divided equally among all Grand Prize winning MM Plays and JJ Plays in all Participating Lotteries. The Annuity Grand Prize amount will be paid

in thirty (30) graduated annual installments. Grand Prizes won shall be funded by the Selling Lotteries in accordance with the formula set by the Mega Millions Lotteries. The Mega Millions Lotteries may set a minimum guaranteed annuitized Grand Prize amount that shall be advertised by the Selling Lotteries as the starting guaranteed annuitized Grand Prize amount. At the time of ticket purchase, a player must select a payment option of either a single cash value payment or annuitized payments of a share of the Grand Prize if the Play is a winning Play. A player's selection of the payment option at the time of purchase from the commission is final and cannot be revoked, withdrawn, or otherwise changed. If no selection is made, payment option will be as described in the chart below:

Figure: 16 TAC §401.315(f)(1) (No change.)

(2) Mega Millions Prize Rollover. If in any Mega Millions Drawing there are no MM Plays or JJ Plays that qualify for the Grand Prize category, the portion of the prize fund allocated to such Grand Prize category shall remain in the Grand Prize category and be added to the amount allocated for the Grand Prize category in the next consecutive Mega Millions Drawing.

(3) A player(s) who elects a cash value option payment shall be paid his/her share(s) in a single cash payment upon completion of validation procedures determined by the commission. The cash value option amount shall be determined by the Mega Millions Lotteries.

(4) All annuitized prizes shall be paid annually in thirty (30) graduated annual installments upon completion of validation procedure determined by the commission. The initial payment shall be paid upon completion of the validation procedures and the subsequent twenty-nine (29) payments shall be paid annually to coincide with the winning draw date, and shall escalate by a factor of 5% annually. Prize payments may be rounded down to the nearest one thousand dollars (\$1,000) increment. The annuitized option prize shall be determined by multiplying the winning Play's share of the Grand Prize Pool by the annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts.

(5) If individual shares of the Grand Prize Pool funds held to fund an annuity is less than \$250,000.00, the Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize Pool.

(6) Funds for the initial payment of an annuitized prize or the lump sum cash value option payment shall be made available by MUSL for payment by the Party Lottery on a schedule approved by the Product Group. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full cash value option payment amount may be delayed pending receipt of funds from the Party Lotteries or other lotteries participating in the Mega Millions game. A Party Lottery may elect to make the initial payment from its own funds after validation, with notice to MUSL.

(7) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments may be made in accordance with §401.310 of this chapter (relating to Payment of Prize Payments Upon Death of Prize Winner), otherwise, payment of prize payments will be made to the estate of a deceased prize winner in accordance with Texas Government Code §466.406.

(8) Prize Payments. All prizes shall be paid through the Selling Lottery that sold the winning Play(s). All low-tier cash prizes (all prizes except the Grand Prize) shall be paid in cash or warrants in accordance with Texas statutes and these rules. A Selling Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(9) Prizes Rounded. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first payment to the winner or winners. Prizes other than the Grand Prize, which, under this section, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

(10) Limited to Highest Prize Won. The holder of a winning MM Play may win only one (1) prize per Play in connection with the Winning Numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category. A JJ Play is not eligible to win non-Grand Prize category prizes. All liabilities for a Mega Millions prize are discharged upon payment of a prize claim.

(11) Claim Period. Prizes must be claimed no later than 180 days after the draw date, or in accordance with Texas Government Code §466.408(e).

(g) Ticket Validation.

(1) To be a valid Play and eligible to receive a prize, a Play's ticket shall satisfy all the requirements established by the commission for validation of winning Plays sold through the computer gaming system, as well as any other validation requirements adopted by the Product Group, the MUSL Board and published as the Confidential MUSL Minimum Game Security Standards. The MUSL and the Party Lotteries shall not be responsible for Plays or tickets that are altered in any manner.

(2) Under no circumstances will a claim for any prize be paid without an official Mega Millions ticket issued as authorized by the commission and matching all game Play, serial number and other validation data residing in the commission's computer gaming system and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming such prize.

(3) In addition to the above, in order to be deemed a valid, winning Mega Millions Play, all of the following conditions must be met:

(A) The validation data must be present in its entirety and must correspond, using the computer validation file, to the number selections printed on the ticket for the applicable drawing date(s);

(B) The ticket must be intact;

(C) The ticket must not be mutilated, altered, reconstituted, or tampered with in any manner;

(D) The ticket must not be counterfeit or an exact duplicate of another winning ticket;

(E) The ticket must have been issued by an authorized sales agent on official Texas Lottery paper stock or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game;

(F) The ticket must not have been stolen, to the knowledge of the commission;

(G) The ticket must be submitted for payment in accordance with the prize claim procedures of the commission as set out in §401.304 of this subchapter and any internal procedures used by the commission;

(H) The Play data on the ticket must have been recorded on the computer gaming system prior to the drawing and the Play data

must match this computer record in every respect. In the event of a contradiction between information as printed on the ticket and as accepted by the commission's computer gaming system, the wager accepted by the commission's computer gaming system shall be the valid wager;

(I) The player or Quick Pick number selections, validation data and the drawing date(s) of an apparent winning Play must appear in the official file of winning Plays, and a Play with that exact data must not have been previously paid;

(J) The Play must not be misregistered, and the Play's ticket must not be defectively printed or printed or produced in error to an extent that it cannot be processed by the commission;

(K) The ticket must pass confidential validation tests in accordance with the MUSL MM Rules. In addition, the ticket must pass all other confidential security checks of the commission;

(L) In submitting a ticket for validation, the claimant agrees to abide by applicable laws, all rules and regulations, instructions, conditions and final decisions of the executive director of the commission;

(M) There must not be any other breach of the MUSL MM Rules, or this subchapter, in relation to the Play, which, in the sole and final opinion of the executive director of the commission, justifies invalidation; and

(N) The Ticket must be submitted to the commission, or the Selling Lottery that issued it.

(4) A Play submitted for validation that fails any of the preceding validation conditions shall be considered void, subject to the following determinations:

(A) In all cases of doubt, the determination of the commission shall be final and binding; however, the commission may, at its option, replace an invalid Play with a Mega Millions Play of equivalent sales price;

(B) In the event a defective ticket is purchased or in the event the commission determines to adjust an error, the claimant's sole and exclusive remedy shall be the replacement of such defective or erroneous ticket(s) with a Mega Millions Play of equivalent sales price; and

(C) In the event a Mega Millions Play is not paid by the commission and a dispute occurs as to whether the Play is a winning Play, the commission may, at its option, replace the Play as provided in subparagraph (A) of this paragraph. This shall be the sole and exclusive remedy of the claimant.

(h) Ticket Responsibility.

(1) Prize Claims. Prize claim procedures shall be governed by the rules of the commission. The MUSL and the Selling Lotteries shall not be responsible for prizes that are not claimed following the proper procedures as determined by the commission.

(2) Stolen Plays. The Product Group, the MUSL, the Party Lotteries and the commission shall not be responsible for lost or stolen Plays.

(3) The Party Lotteries shall not be responsible to a prize claimant for Mega Millions Plays redeemed in error by a Texas Lottery sales agent.

(4) Winning Plays are determined by the numbers drawn and certified by the independent auditor responsible for auditing the Mega Millions draw. MUSL, the Party Lotteries and the commission are not responsible for Mega Millions winning numbers reported in error.

(i) Ineligible Players.

(1) A Play, or share of a Play, for a MUSL game issued by the MUSL or any of its Party Lotteries shall not be purchased by, and a prize won by any such Play, or share of a Play, shall not be paid to:

(A) a MUSL employee, officer, or director;

(B) a contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(C) an employee of an independent accounting firm under contract with MUSL to observe drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm; or

(D) an immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subsections (a), (b), and (c) of this section and residing in the same household.

(2) Those persons designated by the State Lottery Act, Texas Government Code, Chapter 466, as ineligible to play its games shall also be ineligible to play any MUSL lottery game sold in the state of Texas.

(3) A Play, or share of a Play, of the Mega Millions game may not be purchased in any lottery jurisdiction by any Party Lottery board member; commissioner; officer; employee; or spouse, child brother, sister or parent residing as a member of the same household in the principle place of residence of any such person. Prizes shall not be paid to any persons prohibited from playing Mega Millions in a particular jurisdiction by rules, governing law, or any contract executed by the Selling Lottery.

(j) Applicable Law.

(1) In purchasing a Play, or attempting to claim a prize, purchasers and prize claimants agree to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the commission and by directives and determinations of the commission's executive director. Additionally, the player shall be bound to all applicable provisions in the MUSL MM Rules.

(2) A prize claimant agrees, as its sole and exclusive remedy, that claims arising out of a Play can only be pursued against the Party Lottery which issued the Play. Litigation, if any, shall only be maintained within the jurisdiction in which the Play was purchased and only against the Party Lottery that issued the Play. No claim shall be made against any other Party Lottery or against the MUSL.

(3) Nothing in this section or the MUSL MM Rules shall be construed as a waiver of any defense or claim the commission, which issued the Play, any other Party Lottery, or MUSL may have in any litigation, including in the event a player or prize claimant pursues litigation against a Party Lottery or MUSL, or their respective officers, directors or employees.

(4) All decisions made by the commission, including the declaration of prizes and the payment thereof and the interpretation of MUSL MM Rules, shall be final and binding on all Play purchasers and on every person making a prize claim in respect thereof, but only in the jurisdiction where the Play was issued.

(5) Unless the laws, rules, regulations, procedures, and decisions of the commission, which issued the Play, provide otherwise, no prize shall be paid upon a Play purchased, claimed or sold in violation of this section, the MUSL MM Rules, or the laws, rules, regulations, procedures, and decisions of the commission; any such prize claimed but unpaid shall constitute an unclaimed prize under this section and

the laws, rules, regulations, procedures, and decisions of the commission.

(k) Mega Millions Megaplier Promotion.

(1) Promotion Description. The Mega Millions Megaplier Promotion is a limited extension of the Mega Millions game and is conducted in accordance with the MUSL MM Rules and other lottery rules applicable to the Mega Millions game except as may be amended herein. The Promotion will begin at a time announced by the commission and will continue until discontinued by the commission. The Promotion will offer to the owners of a qualifying Megaplier Play a chance to multiply or increase the amount of any of the Set Prizes (the prizes normally paying two dollars (\$2.00) to one million dollars (\$1,000,000.00) won in a Drawing held during the Promotion. The Grand Prize is not a Set Prize and will not be multiplied or increased by means of the Megaplier Promotion or the Just the Jackpot Promotion.

(2) Qualifying Megaplier Play. A qualifying Megaplier Play is any single Mega Millions Play for which the player pays an extra one dollar (\$1.00) for the Megaplier option and that is recorded at on the commission's computer gaming system as a qualifying Megaplier Play. Just the Jackpot Plays do not qualify to purchase a Megaplier Play.

(3) Prizes To Be Multiplied Or Increased. A qualifying Megaplier Play that wins one of the Set Prizes will be multiplied by the number selected, either two, three, four, or five (2, 3, 4, or 5), in a separate random Megaplier Drawing announced in a manner approved by the Product Group.

(4) Megaplier Draws. MUSL will either itself conduct, or authorize a U.S. Lottery to conduct on its behalf, a separate random "Megaplier" Drawing. Before each Mega Millions Drawing a single number (2, 3, 4 or 5) shall be drawn. The Product Group may change one or more of the multiplier features for special promotions from time to time. In the event the Megaplier Drawing does not occur prior to the Mega Millions Drawing, the multiplier number will be a 5 (five), which shall solely be determined by the lottery authorized to conduct the "Megaplier" Drawing.

(5) Megaplier Prize Pool.

(A) The Megaplier Prize Pool (MPP) is hereby created, and shall be used to fund Megaplier prizes. The MPP shall hold the temporary balances that may result from having fewer than expected winning Megaplier Plays. The source of the MPP is the Party Lottery's weekly prize contributions less actual Megaplier Prize liability.

(B) Up to fifty-five percent (55%) of each Drawing period's sales, as determined by the Product Group, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery ticket, shall be collected for the payment of Megaplier prizes.

(C) Prize payout percentages per draw may vary. The MPP shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Megaplier prizes awarded in the current draw and held in the MPP.

(6) End of Game. Any amount remaining in the MPP when the Product Group declares the end of this game shall be returned to the lotteries participating in the account after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction law.

(7) Expected Prize Payout. Except as provided in this section, all prizes awarded shall be paid as single payment Set Prizes. Instead of the Mega Millions Set Prize amounts, qualifying Megaplier

Plays will pay the amounts shown below when matched with the Megaplier number drawn. In certain rare instances, the Mega Millions Set Prize amount may be less than the amount shown. In such case, the Megaplier prizes will be a multiple of the changed Mega Millions prize amount announced after the draw. For example, if the Match 4+1 Mega Millions set prize amount of ten thousand dollars (\$10,000.00) becomes two thousand dollars (\$2,000.00) under the rules of the Mega Millions game, then a Megaplier player winning that prize amount with a 4X multiplier would win eight thousand dollars (\$8,000): two thousand dollars multiplied by four (\$2,000.00 x 4).
Figure: 16 TAC §401.315(k)(7) (No change.)

(8) Probability of Winning. The following table sets forth the probability of the various Megaplier numbers being drawn during a single Mega Millions Drawing. The Product Group may elect to run limited promotions that may modify the multiplier features.
Figure: 16 TAC §401.315(k)(8) (No change.)

(9) Limitation on Payment of Megaplier Prizes.

(A) Prize Pool Carried Forward. The prize pool percentage allocated to the Megaplier Set Prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw or may be held in a prize reserve account.

(B) Pari-Mutuel Prizes--All Prize Amounts. Except as otherwise provided for in subparagraph (C) of this paragraph below:

(i) If the total of the original Mega Millions Set Prizes and the Megaplier prize amounts awarded in a drawing exceeds the percentage of the prize pools allocated to the set prizes, then the amount needed to fund the Set Prizes (including the Megaplier prize amounts) awarded shall be drawn from the following sources, in the following order:

(I) the amount available in the SPP and the MPP, if any;

(II) an amount from the PRA, if available in the account, not to exceed forty million dollars (\$40,000,000.00) per drawing.

(ii) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded (including Megaplier prize amounts), then the highest Set Prize (including the Megaplier prize amounts) shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize (including the Megaplier prize amount) shall become a pari-mutuel prize. This procedure shall continue down through all Set Prizes levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this section shall be divided among the winning MM Plays in proportion to their respective prize percentages. Mega Millions and Megaplier prizes will be reduced by the same percentage.

(C) By agreement with the Mega Millions Lotteries, the Mega Millions Lotteries shall independently calculate their set pari-mutuel prize amounts, including the Megaplier prize amounts. The Party Lotteries and the Mega Millions Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(10) Prize Payment. All Megaplier prizes shall be paid in one single payment through the Party Lottery that sold the winning Megaplier Play(s). A Party Lottery may begin paying Megaplier prizes after receiving authorization to pay from the MUSL central of-

ficie. Prizes that, under this section, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the MPP for the next drawing.

(l) Just the Jackpot™ Promotion.

(1) Promotion Description. The Mega Millions Just the Jackpot Promotion is a limited extension of the Mega Millions game and is conducted in accordance with the MUSL MM Rules and other lottery rules applicable to the Mega Millions game except as may be amended herein, and any other lottery rules applicable to this Promotion. All rules applicable to the Mega Millions game in subsections (a) through (j) of this section are applicable to the Just the Jackpot Promotion unless otherwise indicated. The Promotion will begin at a time announced by the commission and will continue until discontinued by the commission. The Promotion will offer to players a chance to purchase a Just the Jackpot Play ("JJ Play") which will qualify a player for two (2) chances (each a "Play") to win the Grand Prize, and no other prize levels. If the player matches any non-Grand Prize (any prize level other than the Grand Prize) numbers with his or her JJ Play(s), the player who purchased the JJ Play is not eligible to win or claim the non-Grand Prizes in the Just the Jackpot Promotion.

(2) Winning JJ Plays will be paid the Mega Millions Grand Prize, at the election of the player made in accordance with subsection (f) of this section or by a default election made in accordance with this section, either on a graduated annuitized annual pari-mutuel basis or as a cash value option using a rate determined in accordance with subsection (f)(4) of this section. All provisions in subsections (a) through (j) of this section regarding payment of the Mega Millions Grand Prize are applicable to winning JJ Play(s). The Grand Prize amount shall be divided equally by the number of MM Plays and JJ Plays winning the Grand Prize.

(3) Just the Jackpot shall use the Mega Millions winning numbers. Mega Millions winning numbers applicable to determine Just the Jackpot prizes will be determined on the day(s), time(s) and location(s) as determined by the Mega Millions Lotteries.

(4) To play Just the Jackpot, a player shall select (or request a Quick Pick) two (2) sets of five (5) different numbers, from one (1) through seventy (70) and one (1) additional number from one (1) through twenty-five (25). The additional number may be the same as one of the first five numbers selected by the player. Each set of numbers shall constitute a single "Play" as that term is defined in subsection (b)(11) of this section. The two (2) Plays for each three dollar (\$3.00) JJ Plays purchase shall be for the same drawing, although the commission may sell multi-draw JJ Plays as well.

(5) The purchase price of a single JJ Play shall be three dollars (US \$3.00) for two (2) Plays, including any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery JJ Play. JJ Plays must be printed on separate tickets from MM Plays and must clearly indicate the Plays are for the Just the Jackpot Promotion. Each JJ Play is played separately in determining matches to winning numbers and prize amounts. JJ Plays may be purchased from any authorized Texas Lottery sales agent in a manner as approved by the commission and in accordance with this section and the MUSL rules. The winning numbers for the JJ Plays will be the winning numbers drawn in the applicable Mega Millions Drawing. The Grand Prize will not be multiplied or increased by means of the Megaplier Promotion.

(6) Just the Jackpot Prize Pool Contributions.

(A) Mega Millions Prize Pool. The prize pool for JJ Plays shall consist of up to fifty-five percent (55%) of each Drawing

period's sales, inclusive of any specific statutorily-mandated tax of a Party Lottery to be included in the price of a lottery's JJ Play, and inclusive of contributions to the prize pool accounts and prize reserve accounts, but may be higher or lower based the funding required to meet a guaranteed Annuity Grand Prize as may be required by the MUSL MM Rules.

(B) Mega Millions Prize Pool Account and Prize Reserve Account contributions. The Product Group shall set the contribution rates to the Just the Jackpot prize pool and prize reserve accounts established by this section.

(i) The contribution rate for JJ Plays to the GPP shall be 50.2012% of sales. An amount up to five percent (5%) of a Party Lottery's JJ Play sales, including any specific statutorily mandated tax of a Party Lottery to be included in the price of a lottery's JJ Play, shall be added to a Party Lottery's Just the Jackpot Prize Pool contribution and placed in trust in one or more prize pool and prize reserve accounts held by the Product Group at any time that the Party Lottery's share of the PRA is below the amounts designated by the Product Group. Details shall be noted in the Comments to the MUSL MM Rule JJ5.2.

(ii) All provisions regarding the Grand Prize Pool and Prize Reserve Account as described herein are applicable to JJ Play contributions to the Grand Prize Pool and Prize Reserve Account.

(7) Expected Prize Payout Percentage. The Mega Millions Grand Prize payout shall be determined on a pari-mutuel basis. The Grand Prize amount shall be divided equally by the number of MM Plays and JJ Plays winning the Mega Millions Grand Prize. All prize payouts are made with the following expected prize payout percentages, which does not include any additional amount held in prize reserves:

Figure: 16 TAC §401.315(1)(7) (No change.)

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

Filed with the Office of the Secretary of State on February 8, 2019.

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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5012



16 TAC §401.317

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.317 ("Powerball®" Draw Game Rule) with changes to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8534). The purpose of the amendments is to facilitate the potential future sale of Powerball® tickets using Commission-approved third-party point-of-sale systems (in-lane sales) by removing the requirement that the drawing date be printed on the ticket, updating language regarding a player's selection of a Quick Pick, and making other conforming and non-substantive changes, including a recent clarification by the Multi-State Lottery Association regarding cancellation of plays. These changes complement rule amendments adopted by the Commission in Decem-

ber 2017 that also facilitated in-lane sales, but ongoing product development has necessitated small, additional updates to the rule language. The December 2017 rule amendment order noted that the term "third-party point-of-sale systems" refers to the industry terminology used by traditional brick and mortar retailers, such as grocery stores and chain retail stores, to describe their self-contained equipment that performs sales-related tasks at the in-lane check-out counter. These point-of-sale systems are basically cash registers at the checkout counter utilized by the retailers' sales clerks, or self-checkout terminals. A definition of "third-party point-of-sale systems" is already included in the Commission's rules at 16 TAC §401.301(50) and states these systems do not include any gambling device. For clarity, a minor change was made to the rule definition of "Playslip" at §401.317(b)(10), to replace the term "Selling Lottery" with "commission".

In addition, all references to the "Winner Take All" feature, which will not be implemented, have been removed from the rule.

The Commission received written comments on the proposed amendments from a representative of the Kickapoo Traditional Tribe of Texas.

COMMENT SUMMARY: The Tribe objects to the term "computer gaming system" in proposed changes to §401.315(c)(3) and §401.317(c)(3) regarding Play cancellations, because this term is not defined in the Commission's rules. The Tribe suggests the Commission instead should use the term "Lottery gaming system", which is defined in Commission Rule 401.301(24) as "The commission or commission's vendor's computer system consisting of terminals, central processing equipment, and a communication network."

COMMISSION RESPONSE: The Commission agrees with the comment and has made this change to the adopted rule.

The rule amendments are adopted under the Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The adopted amendments implement Texas Government Code, Chapter 466.

§401.317. "Powerball®" Draw Game Rule.

(a) Powerball. Powerball is a Multi-State Lottery Association (MUSL) lottery draw game offered by all Lotteries that have agreed to MUSL's Powerball Group Rules. The purpose of the Powerball game is the generation of revenue for MUSL Party Lottery members and Mega Millions Party Lotteries participating under the Cross-Sell Agreement, through the operation of a specially designed multi-jurisdiction lottery game that will award prizes to ticket holders of validated winning tickets matching specified combinations of numbers randomly selected in regularly scheduled Drawings. The Powerball game is authorized to be conducted by the commission executive director (executive director) under the conditions of the MUSL rules, the laws of the State of Texas, this section, and under such further instructions, directives, and procedures as the executive director may issue in furtherance thereof. In this regard, the executive director is authorized to issue such further instructions and directives as may be necessary to conform the conduct and play of the Powerball game to the requirements of the MUSL rules if, in the opinion of the executive director, such instructions, directives, and procedures are in conformance with state law. To be clear, the authority to participate in the Powerball game is provided to the Texas Lottery Commission (commission) by MUSL. The conduct and play of the Powerball game must conform to the MUSL Powerball Group

Rules. Further, if a conflict arises between this section and §401.304 of this chapter (relating to Draw Game Rules (General)), this section shall have precedence. In addition to other applicable rules contained in Chapter 401, this section and definitions herein apply unless the context requires a different meaning or is otherwise inconsistent with the intent of the rules adopted by the MUSL or the MUSL Powerball Group.

(b) Definitions.

(1) "Agent" or "retailer" means a person or entity authorized by the commission to sell lottery Plays.

(2) A "Drawing" refers collectively to the formal draw event for randomly selecting the Winning Numbers that determine the number of winning Plays for each prize level of the Powerball game and Power Play promotion.

(3) "Game ticket" or "ticket" means an acceptable evidence of Play, which is a ticket produced in a manner that meets the specifications defined in the rules of the Selling Lottery and subsection (g) of this section, and is a physical representation of the Play or Plays sold to the player.

(4) "MUSL" means the Multi-State Lottery Association, a government-benefit association wholly owned and operated by the MUSL Party Lotteries.

(5) "MUSL Board" means the governing body of the MUSL, which is comprised of the chief executive officer of each Party Lottery. "MUSL Finance and Audit Committee" shall mean the committee of that name established by the MUSL Board.

(6) "MUSL Annuity Factor" shall mean the annuity factor as determined by the MUSL central office through a method approved by the MUSL Finance and Audit Committee and which is used as described in this rule.

(7) "Pari-Mutuel" or "pari-mutuel" as used in this section shall mean wagered funds that are pooled and then paid in equal shares to the holders of winning Plays as described in this section and the MUSL Rules.

(8) "Party Lottery" means a state lottery or lottery of a political subdivision or entity that has joined MUSL and is authorized to sell the Powerball game. "Licensee Lottery" shall mean a state lottery or lottery of a governmental unit, political subdivision, or entity thereof that is not a Party Lottery but has agreed to comply with all applicable MUSL and Product Group requirements and has been authorized by the MUSL and by the Powerball Product Group to sell the Powerball game. "Selling Lottery" or "Participating Lottery" shall mean a lottery authorized by the Product Group to sell Plays, including Party Lotteries and Licensee Lotteries.

(9) "Play" means the six (6) numbers, the first five (5) from a field of sixty-nine (69) numbers and the last one (1) from a field of twenty-six (26) numbers, that appear on a ticket and are to be played by a player in the Powerball game.

(A) "Powerball Plays" (PB Plays) shall refer to Plays purchased as part of the Powerball game, but shall not include Power Play Plays.

(B) "Power Play Plays" shall refer to Plays purchased as part of the Power Play promotion described in subsection (k) of this section.

(10) "Playslip" means a physical or electronic means by which a player communicates their intended Play selection to the retailer as defined and approved by the commission. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(11) "Power Play" shall refer to the Power Play promotion as described in subsection (k) of this section.

(12) "Powerball Group" or "Product Group" means the MUSL member group of lotteries which have joined together to offer the Powerball product pursuant to the terms of the Multi-State Lottery Agreement and the Powerball Group's rules, including the MUSL Powerball Drawing Procedures. In this rule, wherever either term is used it is referring to the MUSL Powerball Group.

(13) "Prize" means an amount paid to a person or entity holding a winning ticket.

(A) "The Grand Prize" shall refer to the top prize in the Powerball game.

(B) The Advertised Grand Prize shall mean the estimated annuitized Grand Prize amount as determined by the MUSL Central Office by use of the MUSL Annuity Factor and communicated through the Selling Lotteries prior to the Grand Prize Drawing. The Advertised Grand Prize is not a guaranteed prize amount and the actual Grand Prize amount may vary from the advertised amount, except in circumstances where there is a guaranteed Grand Prize amount as described in paragraph (6) of subsection (f) of this section.

(C) The "Set Prize" or "low-tier prize" means all other prizes, except the Grand Prize, and, except in instances outlined in this section, will be equal to the prize amount established by the Product Group for the prize level.

(14) "Terminal" means a device authorized by the commission for the purpose of issuing Powerball game tickets and as defined in §401.301 (General Definitions) of this chapter.

(15) "Winning Numbers" means the numbers randomly selected during a Drawing event which shall be used to determine the winning Plays for the Powerball game or the Powerball game promotion being drawn.

(c) Game Description.

(1) Powerball Game. Powerball is a five (5) out of sixty-nine (69) plus one (1) out of twenty-six (26) numbers lottery game drawn every Wednesday and Saturday, as part of the Powerball Drawing, which pays the Grand Prize, at the election of the player made in accordance with this section, or by a default election made in accordance with this section, either on an annuitized pari-mutuel basis or as a single lump sum payment of the total funding held in the Grand Prize Pool for the winning Drawing on a pari-mutuel basis. Except as provided in this section, all other prizes are paid on a single payment basis.

(A) Powerball Winning Numbers applicable to determine Powerball prizes will be determined in the Powerball Drawing. During the Powerball Drawing, five (5) numbers shall be drawn from the first set of sixty-nine (69) and one (1) number shall be drawn from the second set of twenty-six (26) numbers, which shall constitute the Powerball Winning Numbers.

(B) To play Powerball, a player shall select five (5) different numbers, from one (1) through sixty-nine (69) and one (1) additional number from one (1) through twenty-six (26), or request the retailer to generate a Quick Pick selection of numbers from the lottery terminal. The additional number may be the same as one of the first five numbers selected by the player.

(C) Powerball Plays can be purchased for two dollars (U.S. \$2.00), including any specific statutorily-mandated tax of a Selling Lottery to be included in the price of a PB Play. PB Plays may be purchased from a Selling Lottery approved sales outlet in a manner as approved by the Selling Lottery and in accordance with MUSL Rules.

(2) Claims. A ticket shall be the only proof of a game Play or Plays and is subject to the validation requirements set forth in subsection (g) of this section. The submission of a winning ticket to the issuing Selling Lottery or its authorized agent shall be the sole method of claiming a prize or prizes. A playslip has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected. A terminal-produced paper receipt has no pecuniary or prize value and shall not constitute evidence of Play purchase or of numbers selected.

(3) Cancellations Prohibited. In all instances, a Play recorded on the Lottery gaming system may not be voided or cancelled by returning the ticket to the selling agent or to the commission, including tickets that are misprinted, illegible, printed in error, or for any reason not successfully transferred to an authorized selling entity or player. A Selling Lottery may develop an approved method of compensating retailers for Plays that are not transferred to a player for a reason acceptable to the Selling Lottery and not prohibited by the Powerball Product Group. No Play that is eligible for a prize can be returned to the commission for credit. Plays accepted by retailers as returned Plays and which cannot be re-sold shall be deemed owned by the bearer thereof.

(4) Player Responsibility. It shall be the sole responsibility of the player to verify the accuracy of the game Play or Plays and other data printed on the ticket. The placing of Plays is done at the player's own risk through the licensed sales agent who is acting on behalf of the player in entering the Play or Plays.

(5) Entry of Plays. Plays may only be entered manually using the lottery retailer terminal keypad or touch screen, by means of a commission-approved playslip, or by such other means as approved by the commission, including entry using authorized third-party point-of-sale ("POS") systems. Retailers shall not permit the use of playslips that are not approved by the commission. Retailers shall not permit any device to be physically or wirelessly connected to a lottery terminal to enter Plays, except as approved by the commission. A ticket generated using a selection method that is not approved by the commission is not valid. A selection of numbers for a Play may be made only if the request is made in person. Acceptable methods of Play selection may include:

- (A) using a self-service terminal;
- (B) using a playslip;
- (C) using a previously-generated "Powerball" ticket provided by the player;
- (D) selecting a Quick Pick;
- (E) requesting a retailer to manually enter numbers; or
- (F) using a QR code generated through a Texas Lottery Mobile Application offered and approved by the commission.

(6) Subscription Sales. A subscription sales program may be offered, at the discretion of the executive director.

(7) Maximum Purchase. The maximum number of consecutive Drawings on a single PB Play purchase is ten (10), including Power Play Plays if purchased.

(d) Powerball Prize Pool.

(1) Powerball Prize Pool.

(A) The prize pool for all Powerball prize categories shall consist of fifty percent (50%) of each Drawing period's Powerball sales, inclusive of any specific statutorily-mandated tax of a Selling

Lottery to be included in the price of a PB Play, and including contributions to the prize pool accounts and prize reserve accounts.

(B) Powerball Prize Pool Accounts and Prize Reserve Accounts. The Product Group shall set the contribution rates to the prize pool and to one or more prize reserve or pool accounts established by the MUSL Powerball Group Rules.

(i) Prize Reserve Accounts. The Product Group has established the following prize reserve accounts for the Powerball game: the Powerball Prize Reserve Account (PRA), which is used to guarantee the payment of valid, but unanticipated, Grand Prize claims that may result from a system error or other reason; and the Powerball Set Prize Reserve Account (SPRA), which is used to fund deficiencies in low-tier Powerball prize payments, subject to the limitations of the MUSL rules.

(ii) Prize Pool Accounts. The Product Group has established the following prize pool accounts for the Powerball game: the Grand Prize Pool, which is used to fund the current Grand Prize; the Powerball Set Prize Pool, which is used to fund the Powerball Set Prizes; the Powerball Set-Aside Pool, which is used to fund the payment of the awarded minimum starting annuity Grand Prizes and minimum annuity Grand Prize increase, if necessary (subject to the limitations in the MUSL Powerball Group Rules), as may be set by the Product Group; and the Grand Prize Carry Forward Pool (GPCFP), which is used to fund the starting minimum annuity Grand Prize, as may be set by the Product Group, if such funds are available, and if sales do not fund the Grand Prize. The Power Play Prize Pool is described in paragraph (k)(4) of this section. The Powerball Set Prize Pool shall hold the temporary balances that may result from having fewer than expected winners in the Powerball Set Prize (aka low-tier prize) categories and the source of the Powerball Set Prize Pool is the Party Lottery's weekly prize contributions less actual Powerball Set Prize liability.

(iii) The above prize reserve accounts, the GPCFP and the Set-Aside Pool shall have maximum balance amounts or balance limiter triggers that are set by the Product Group and are detailed in the Comments to the MUSL Rule. The maximum balance amounts and balance limiter triggers are subject to review by the MUSL Board Finance and Audit Committee. The Finance and Audit Committee shall have two weeks to state objections, if any, to the approved maximum balance amounts or balance limiter triggers. Approved maximum balance amounts or balance limiter triggers shall become effective no sooner than two weeks after notice is given to the Finance and Audit Committee and no objection is stated or sooner if the Committee affirmatively approves the maximum balance amounts or balance limiter triggers. The Group may appeal the Committee's objections to the full Board. Group approved changes in the maximum balance amounts or balance limiter triggers set by the Product Group shall be effective only after the next Grand Prize win.

(iv) The maximum contribution rate to the Grand Prize Pool shall be 68.0131% of the prize pool (34.0066% of sales). An amount up to five percent (5%) of a Party Lottery's sales shall be deducted from a Party Lottery's Grand Prize Pool contribution and placed in trust in one or more prize pool accounts and prize reserve accounts held by the Product Group (hereinafter the "prize pool and reserve deduction") at any time that the prize pool accounts and Party Lottery's share of the prize reserve accounts is below the amounts designated by the Product Group. An additional amount up to twenty percent (20%) of a Party Lottery's sales shall be deducted from a Party Lottery's Grand Prize Pool contribution and placed in trust in the GPCFP to be held by the Product Group at a time as determined by the Product Group.

(v) The Product Group may determine to expend all or a portion of the funds in the Powerball prize pool accounts (except

the Powerball Grand Prize Pool account and the GPCFP) and the prize reserve accounts: (1) for the purpose of indemnifying the Selling Lotteries for the payment of prizes to be made by the Selling Lottery; and, (2) for the payment of prizes or special prizes in the game, limited to prize pool and prize reserve contributions from lotteries participating in the special prize promotion, subject to the approval of the Board's Finance and Audit Committee or that Committee's failure to object after given two weeks' notice of the planned action, which actions may be appealed to the full MUSL Board by the Product Group. The GPCFP may only be expended to fund the starting minimum annuity Grand Prize.

(vi) The prize reserve shares of a Party Lottery may be adjusted with refunds to the Party Lottery from the prize reserve account(s) as may be needed to maintain the approved maximum balance and sales percentage shares of the Party Lotteries.

(vii) A Party Lottery may contribute to its sales percentage share of prize reserve accounts over time, but in the event of a draw down from a prize reserve account, a Party Lottery is responsible for its full sales percentage share of the prize reserve account, whether or not it has been paid in full.

(viii) Any amount remaining in the Powerball prize pool accounts or prize reserve accounts when the Product Group declares the end of this game shall be returned to the lotteries participating in the accounts after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or otherwise expended in a manner at the election of the individual Members of the Product Group in accordance with jurisdiction statute.

(2) Expected Powerball Prize Payout Percentages. The Grand Prize payout shall be determined on a pari-mutuel basis. Except as otherwise provided in this section, all other prizes awarded shall be paid as single payment set cash prizes. All prize payouts are made with the following expected prize payout percentages, although the prize payout percentage per draw may vary: Figure: 16 TAC §401.317(d)(2) (No change.)

(A) The prize money allocated to the Powerball Grand Prize category shall be divided on a pari-mutuel basis by the number of PB Plays winning the Powerball Grand Prize.

(B) Powerball Set Prize Pool Carried Forward. For Party Lotteries, the Powerball Set Prize Pool (for single payment prizes of \$1,000,000 or less) shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Powerball Set Prizes awarded in the current draw.

(C) Pari-Mutuel Powerball Prize Determinations. Except as otherwise provided, if the total of the Powerball Set Prizes (as multiplied by the respective Power Play multiplier, if applicable) awarded in a Drawing exceeds the percentage of the prize pool allocated to the Powerball Set Prizes, then the amount needed to fund the Powerball Set Prizes, including Power Play prizes, awarded shall be drawn first from the amount available in the Powerball Set Prize Pool and the Power Play Prize Pool, if any; second from the SPRA, if available, not to exceed forty million dollars (\$40,000,000.00) per Drawing; and, third from other amounts as agreed to by the Product Group in their sole discretion.

(D) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded, including Power Play Prizes, then the highest Set Prize shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize, including Power Play prizes, shall become a pari-mutuel

prize. This procedure shall continue down through all Set Prize levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that instance, the money available from the funding sources listed in this rule shall be divided among the winning PB Plays in proportion to their respective prize percentages. Powerball Set Prizes and Power Play Prizes will be reduced by the same percentage.

(E) By agreement, the Licensee Lotteries shall independently calculate their Set Prize pari-mutuel prize amounts. The Party Lotteries and the Licensee Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(e) Probability of Winning Powerball Plays. The following table sets forth the probability of winning PB Plays and the probable distribution of winning PB Plays in and among each prize category, based upon the total number of possible combinations in the Powerball game. The Set Prize Amount shall be the prizes set for all Selling Lotteries unless prohibited or limited by a jurisdiction's statute or judicial requirements.

Figure: 16 TAC §401.317(e) (No change.)

(f) Powerball Prize Payment.

(1) Powerball Grand Prizes. The Advertised Grand Prize in a Powerball game is not a guaranteed amount; it is an estimated amount, and all advertised prizes, even advertised Set Prizes, are estimated amounts. At the time of ticket purchase, a player must select a payment option of either a single lump sum payment (cash value option or CVO) or annuitized payments (Annuity) of a share of the Grand Prize if the PB Play is a winning Play. If no selection is made, payment option will be as described in the chart below:

Figure: 16 TAC §401.317(f)(1) (No change.)

(A) A player's selection of the payment option at the time of purchase is final and cannot be revoked, withdrawn, or otherwise changed.

(B) The Grand Prize available in the Grand Prize Pool shall be determined on a pari-mutuel basis among all winning PB Plays of the Grand Prize. A player(s) who elects a cash value option payment shall be paid their share(s) in a single lump sum payment. The annuitized option prize shall be determined by multiplying the winning Play's share of the Grand Prize Pool by the annuity factor established in accordance with Texas law and the rules of the Texas Comptroller of Public Accounts. The MUSL Annuity Factor will not be used for Texas Lottery players. Neither MUSL nor any Selling Lottery shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to MUSL.

(C) In certain instances announced by the Powerball Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to paragraph (6) of this subsection.

(D) If individual shares of the Grand Prize Pool funds held to fund an annuity is less than \$250,000.00, the Powerball Group, in its sole discretion, may elect to pay the winners their share of the funds held in the Grand Prize Pool. All annuitized prizes shall be paid annually in thirty (30) payments with the initial payment being made in a single payment, to be followed by twenty-nine (29) payments funded by the annuity.

(E) All annuitized prizes shall be paid annually in thirty (30) graduated payments, as provided by the MUSL rules, (increasing each year) at a rate as determined by the MUSL Product Group. Prize payments may be rounded down to the nearest one thousand dollars (\$1,000).

(F) Funds for the initial payment of an annuitized prize or the lump sum cash value option payment shall be made available by MUSL for payment by the Selling Lottery no earlier than the fifteenth calendar day (or the next banking day if the fifteenth day is a holiday) following the Drawing. If necessary, when the due date for the payment of a prize occurs before the receipt of funds in the prize pool trust sufficient to pay the prize, the transfer of funds for the payment of the full lump sum cash value option payment amount may be delayed pending receipt of funds from the Selling Lotteries. The identification of the securities to fund the annuitized prize shall be at the sole discretion of the State of Texas. If the State of Texas purchases the securities, or holds the prize payment annuity for a Powerball prize won in this state, the prize winner will have no recourse on the MUSL or any other Party Lottery for payment of that prize.

(2) Payment of Prize Payments upon the Death of a Prize Winner. In the event of the death of a prize winner, payments may be made in accordance with §401.310 of this chapter (relating to Payment of Prize Payments Upon Death of Prize Winner), otherwise, payment of prize payments will be made to the estate of a deceased prize winner in accordance with Texas Government Code §466.406.

(3) Powerball Prize Payments. All prizes shall be paid through the Selling Lottery that sold the winning Play(s). All low-tier cash prizes (all prizes except the Grand Prize) shall be paid in cash or warrants in accordance with Texas statutes and these rules. A Selling Lottery may begin paying low-tier cash prizes after receiving authorization to pay from the MUSL central office.

(4) Powerball Prizes Rounded. Annuitized payments of the Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism. Breakage on an annuitized Grand Prize win shall be added to the first cash payment to the winner or winners. Prizes other than the Grand Prize, which, under this section, may become single-payment, pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

(5) Powerball Prize Rollover. If the Grand Prize is not won in a Drawing, the prize money allocated for the Grand Prize shall roll over and be added to the Grand Prize Pool for the following Drawing.

(6) Funding of Guaranteed Powerball Prizes. The Powerball Group may offer guaranteed minimum Grand Prize amounts or minimum increases in the Grand Prize amount between Drawings or make other changes in the allocation of prize money where the Powerball Group finds that it would be in the best interest of the game. If a minimum Grand Prize amount or a minimum increase in the Grand Prize amount between Drawings is offered by the Powerball Group, then the Grand Prize shares shall be determined as follows:

(A) If there are multiple Grand Prize winning PB Plays during a single Drawing, each selecting the annuitized option prize, then a winning PB Play's share of the guaranteed annuitized Grand Prize shall be determined by dividing the guaranteed annuitized Grand Prize by the number of Grand Prize winning PB Plays.

(B) If there are multiple Grand Prize winning PB Plays during a single Drawing and at least one of the Grand Prize ticket holders has elected the annuitized option prize, then the MUSL Annuity Factor may be utilized to determine the cash pool. The cost of the annuitized prize(s) will be determined at the time the annuity is purchased through a process as approved by the MUSL Board. If the annuitized option prize is selected by a Texas Lottery player, the amount shall be determined by multiplying the winning PB Play's share of the Grand Prize Pool by the annuity factor established in accordance with Texas

law and the rules of the Texas Comptroller of Public Accounts. The MUSL Annuity Factor will not be used for Texas Lottery players.

(C) If there are multiple Grand Prize winning PB Plays during a single Drawing, and no claimant of the Grand Prize has elected the annuitized option prize, then the amount of cash in the Grand Prize Pool shall be an amount equal to the guaranteed annuitized amount divided by the MUSL Annuity Factor.

(D) Minimum guaranteed prizes or increases may be waived upon approval of the Powerball Group if the alternate funding mechanism set out in subparagraph (d)(2)(D) of this section becomes necessary.

(7) Limited to Highest Powerball Prize Won. The holder of a winning PB Play may win only one (1) prize per PB Play in connection with the Winning Numbers drawn, and shall be entitled only to the prize won by those numbers in the highest matching prize category. All liabilities for a Powerball game or Powerball game promotional prize are discharged upon payment of a prize claim.

(8) Powerball Prize Claim Period. Prizes must be claimed no later than 180 days after the draw date.

(g) Play Validation. To be a valid Play and eligible to receive a prize, a Play's ticket shall satisfy all the requirements established by the commission for validation of winning tickets sold through its lottery gaming system and any other validation requirements adopted by the Powerball Group, the MUSL Board, and published as the Confidential MUSL Minimum Game Security Standards. The MUSL and the Selling Lotteries shall not be responsible for tickets which are altered in any manner.

(1) Under no circumstances will a claim be paid for any prize without an official ticket matching all game Play, serial number and other validation data residing in the selling Party Lottery's lottery gaming system and such ticket shall be the only valid proof of the wager placed and the only valid evidence for purposes of claiming or redeeming such prize.

(2) In addition to the above condition, in order to be deemed a valid winning Play, all of the following conditions must be met:

(A) The validation data must be present in its entirety and must correspond, using the computer validation file, to the number selections printed on the ticket for the applicable Drawing date(s).

(B) The ticket must be intact.

(C) The ticket must not be mutilated, altered, reconstituted, or tampered with in any manner.

(D) The ticket must not be counterfeit or an exact duplicate of another winning ticket.

(E) The ticket must have been issued by an authorized sales agent, selling agent or retailer on official Texas Lottery paper stock, or, for third-party point-of-sale systems approved by the commission, printed on paper stock or otherwise issued in a manner approved by the commission to provide tangible evidence of participation in a lottery game.

(F) The ticket must not have been stolen, to the knowledge of the commission.

(G) The Play data must have been recorded on the commission's lottery gaming system prior to the Drawing and the Play data must match this lottery record in every respect. In the event of a conflict between information as printed on the ticket and as accepted by the

commission's lottery gaming system, the wager accepted by the commission's lottery gaming system shall be the valid wager.

(H) The player or Quick Pick number selections, validation data and the Drawing date(s) of an apparent winning Play must appear in the official file of winning Plays, and a Play with that exact data must not have been previously paid.

(I) The play must not be misregistered, and the Play's ticket must not be defectively printed or printed or produced in error to an extent that it cannot be processed by the commission.

(J) In submitting a Play for validation, the claimant agrees to abide by applicable laws, all rules and regulations, instructions, conditions and final decisions of the executive director.

(K) There must not be any other breach of the Powerball Game Rules in relation to the Play that, in the opinion of the executive director, justifies invalidation.

(L) The Play must be submitted to the Selling Lottery that issued it.

(3) A Play submitted for validation that fails any of the validation conditions shall be considered void, subject to the following determinations:

(A) In all cases of doubt, the determination of the commission shall be final and binding; however, the commission may, at its option, replace an invalid Play with a Play of equivalent sales price;

(B) In the event a defective ticket is purchased or in the event the commission determines to adjust an error, the claimant's sole and exclusive remedy shall be the replacement of such defective or erroneous ticket(s) with a Play of equivalent sales price;

(C) In the event a Play is not paid by the commission and a dispute occurs as to whether the Play is a winning Play, the commission may, at its option, replace the Play as provided in subparagraph (A) of this paragraph. This shall be the sole and exclusive remedy of the claimant.

(h) Ticket Responsibility.

(1) Signature. Until such time as a signature is placed upon a ticket in the area designated for signature, a ticket shall be owned by the bearer of the ticket. When a signature is placed on the ticket in the place designated, the person whose signature appears in such area shall be the owner of the ticket and shall be entitled (subject to the validation requirements in subsection (g) of this section (Ticket Validation) and state or district law) to any prize attributable thereto.

(2) Multiple Claimants. The issue of multiple claimants shall be handled in accordance with Texas Government Code Chapter 466 and §401.304 of this chapter.

(3) Stolen Tickets. The Powerball Group, the MUSL and the Party Lotteries shall not be responsible for lost or stolen tickets.

(4) Prize Claims. Prize claim procedures shall be governed by the rules of the commission as set out in §401.304 of this subchapter and any internal procedures used by the commission. The MUSL and the Party Lotteries shall not be responsible for prizes that are not claimed following the proper procedures as determined by the Selling Lottery.

(5) The MUSL and the Participating Lotteries shall not be responsible to a prize claimant for Plays redeemed in error by a selling agent, sales agent or retailer.

(6) Winning Plays are determined by the numbers drawn and certified by the independent auditor responsible for auditing the

Drawing. MUSL and the Participating Lotteries are not responsible for Winning Numbers reported in error.

(i) Ineligible Players.

(1) A Play or share for a MUSL game issued by the MUSL or any of its Selling Lotteries shall not be purchased by, and a prize won by any such Play or share shall not be paid to:

(A) a MUSL employee, officer, or director;

(B) a contractor or consultant under agreement with the MUSL to review the MUSL audit and security procedures;

(C) an employee of an independent accounting firm under contract with MUSL to observe Drawings or site operations and actually assigned to the MUSL account and all partners, shareholders, or owners in the local office of the firm; or

(D) an immediate family member (parent, stepparent, child, stepchild, spouse, or sibling) of an individual described in subparagraphs (A), (B), and (C) of this paragraph and residing in the same household.

(2) Those persons designated by a Selling Lottery's law as ineligible to play its games shall also be ineligible to Play the Powerball game in that Selling Lottery's jurisdiction.

(j) Applicable Law.

(1) In purchasing a Play, as evidenced by a ticket, or attempting to claim a prize, the purchasers and prize claimants agree to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the Selling Lottery where the ticket was purchased, and by directives and determinations of the director of that Party Lottery.

(2) A prize claimant agrees, as its sole and exclusive remedy, that claims arising out of a Powerball game or a Powerball game promotion (as described in this section) can only be pursued against the Selling Lottery which issued the Play. Litigation, if any, shall only be maintained within the jurisdiction in which the Play was purchased and only against the Selling Lottery that issued the Play. No claim shall be made against any other Participating Lottery or against the MUSL.

(3) Nothing in these Rules shall be construed as a waiver of any defense or claim the Selling Lottery which issued the Play, any other Participating Lottery or MUSL may have in any litigation, including in the event a player or prize claimant pursues litigation against the Selling Lottery, any other Participating Lottery or MUSL, or their respective officers, directors or employees.

(4) All decisions made by a Selling Lottery, including the declaration of prizes and the payment thereof and the interpretation of Powerball Rules, shall be final and binding on all Play purchasers and on every person making a prize claim in respect thereof, but only in the jurisdiction where the Play was issued.

(5) Unless the laws, rules, regulations, procedures, and decisions of the Lottery which issued the Play provide otherwise, no prize shall be paid upon a Play purchased, claimed or sold in violation of the MUSL Powerball Rules or the laws, rules, regulations, procedures, and decisions of that Selling Lottery; any such prize claimed but unpaid shall constitute an unclaimed prize under these Rules and the laws, rules, regulations, procedures, and decisions of that Selling Lottery.

(k) Powerball Special Game Rules: Powerball Power Play®.

(1) Power Play® Description. The Powerball Power Play® is a promotional limited extension of the Powerball game and is conducted in accordance with the Powerball game rules and other lottery rules applicable to the Powerball game except as may be amended

herein. Power Play will begin at a time announced by the commission and will continue until discontinued by the commission. Power Play will offer to the owners of a qualifying Play a chance to increase the amount of any of the eight Low-Tier Set Prizes (the Low-Tier prizes normally paying \$4 to \$1,000,000) won in a Power Play Drawing. The Grand Prize is not a Set Prize and will not be increased. MUSL will conduct a separate random "Power Play" Drawing and announce results during each of the regular Powerball Drawings held during the promotion. During each Power Play Drawing a single number (2, 3, 4, 5 and sometimes 10) shall be drawn. The ten (10X) multiplier shall be available for all Drawings in which the initially Advertised Grand Prize amount is one hundred fifty million dollars (\$150,000,000.00) or less. The probability of the possible Power Play numbers being drawn is indicated in Figure 16 TAC §401.317(k)(4)(D). The Powerball Group may modify the multiplier features for special promotions from time to time.

(2) Qualifying Play. A qualifying Play is any single PB Play for which the player pays an extra dollar (\$1.00) for the Power Play option and which is recorded at the commission's lottery gaming system as a qualifying Power Play Play.

(3) Prizes to be Increased. Except as provided in the MUSL Powerball game rules and this section, a qualifying Play which wins one of the seven lowest Set Prizes (excluding the Match 5 + 0) will be multiplied by the number drawn, either two (2), three (3), four (4), five (5), or sometimes ten (10), in a separate random Power Play Drawing announced during the official Powerball Drawing show. The ten (10X) multiplier will be available for Drawings in which the initially advertised annuitized Grand Prize amount is one hundred fifty million dollars (\$150,000,000.00) or less. The announced Match 5+0 prize, for players selecting the Power Play option, shall be paid two million dollars (\$2,000,000.00) unless a higher limited promotional dollar amount is announced by the Powerball Group.

Figure: 16 TAC §401.317(k)(3) (No change.)

(4) Prize Pool.

(A) Power Play Prize Pool. The Power Play Prize Pool is created to be used to fund Power Play Prizes and shall hold the temporary balances that may result from having fewer than expected winners in the Power Play. The source of the Power Play Prize Pool is the Party Lottery's weekly prize contributions less actual Power Play Prize liability. In total, fifty percent (50%) of each draw's sales shall be collected for the payment of prizes.

(i) In Drawings where the ten (10X) multiplier is available, the expected payout for all prize categories shall consist of up to forty-nine and nine hundred sixty-nine thousandths percent (49.969%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery Play. In Drawings where the ten (10X) multiplier is not available, the expected payout for all prize categories shall consist of up to forty-five and nine hundred thirty-four thousandths percent (45.934%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery Play.

(ii) In Drawings where the ten (10X) multiplier is available, an additional thirty-one thousandths percent (0.031%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to be included in the price of a lottery ticket, may be collected and placed in trust in the Power Play Prize Pool, for the purpose of paying Power Play prizes. In drawings where the ten (10X) multiplier is not available, an additional four and sixty-six thousandths percent (4.066%) of each Drawing period's sales, including any specific statutorily mandated tax of a Selling Lottery to

be included in the price of a lottery ticket, may be collected and placed in trust in the Power Play Prize Pool, for the purpose of paying Power Play Prizes.

(iii) The prize payout percentage per draw may vary. The Power Play Prize Pool shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Power Play Prizes awarded in the current draw and held in the Power Play Prize Pool.

(B) End of Promotion. Any amount remaining in the Power Play Prize Pool when the Powerball Group declares the end of this promotion shall be returned to the lotteries participating in the account after the end of all claim periods of all Selling Lotteries, carried forward to a replacement game or promotion, or otherwise expended in a manner at the election of the individual Participating Lotteries of the Product Group in accordance with jurisdiction statute.

(C) Expected Prize Payout. Except as provided in this section, all prizes awarded shall be paid as single payment cash prizes. Instead of the Powerball Set Prize amounts, qualifying winning Plays of Power Play will pay the amounts shown in paragraph (3) of this subsection, above. In certain rare instances, the Powerball Set Prize amount may be less than the amount shown in Figure: 16 TAC §401.317(k)(3). In such case, the eight lowest Power Play Prizes will be changed to an amount announced after the draw. For example, if the Match 4+1 Powerball Set Prize amount of \$50,000 becomes \$25,000 under the rules of the Powerball game, and a 5X Power Play Multiplier is drawn, then a Power Play winning Play prize amount would win \$125,000.

(D) Probability of Power Play Numbers Being Drawn. The following table sets forth the probability of the various Power Play numbers being drawn during a single Powerball Power Play Drawing. The Powerball Group may elect to run limited promotions that may modify the multiplier features. Power Play does not apply to the Powerball Grand Prize. Except as provided in subparagraph (C) of this paragraph, a Power Play Match 5 + 0 prize is set at two million dollars (\$2,000,000.00), regardless of the multiplier selected. Figure: 16 TAC §401.317(k)(4)(D)

(5) Limitations on Payment of Power Play Prizes.

(A) Prize Pool Carried Forward. The prize pool percentage allocated to the Power Play Set Prizes shall be carried forward to subsequent draws if all or a portion of it is not needed to pay the Set Prizes awarded in the current draw.

(B) Pari-Mutuel Prizes--All Prize Amounts. If the total of the original Powerball Set Prizes and the Power Play Prizes awarded in a Drawing exceeds the percentage of the prize pools allocated to the Set Prizes, then the amount needed to fund the Set Prizes (including the Power Play prize amounts) awarded shall first come from the amount available in the Set Prize Pool and the Power Play Prize Pool, if any, second from the Powerball Group's Set Prizes Reserve Account, if available, not to exceed forty million dollars (\$40,000,000.00) per Drawing, and third from other amounts as agreed to by the Powerball Group in their sole discretion.

(C) If, after these sources are depleted, there are not sufficient funds to pay the Set Prizes awarded (including Power Play prize amounts), then the highest Set Prize (including the Power Play prize amounts) shall become a pari-mutuel prize. If the amount of the highest Set Prize, when paid on a pari-mutuel basis, drops to or below the next highest Set Prize and there are still not sufficient funds to pay the remaining Set Prizes awarded, then the next highest Set Prize, including the Power Play prize amount, shall become a pari-mutuel prize. This procedure shall continue down through all Set Prizes levels, if necessary, until all Set Prize levels become pari-mutuel prize levels. In that

instance, the money available from the funding sources listed in this section shall be divided among the winning Plays in proportion to their respective prize percentages. Powerball and Power Play prizes will be reduced by the same percentage. By agreement, the Licensee Lotteries shall independently calculate their set pari-mutuel prize amounts, including the Power Play prize amounts. The Party Lotteries and the Licensee Lotteries shall then agree to set the pari-mutuel prize amounts for all lotteries selling the game at the lesser of the independently-calculated prize amounts.

(6) Prize Payment.

(A) Prize Payments. All Power Play prizes shall be paid in a single payment through the Selling Lottery that sold the winning Power Play Play(s). A Selling Lottery may begin paying Power Play prizes after receiving authorization to pay from the MUSL central office.

(B) Prizes Rounded. Prizes, which, under these rules, may become pari-mutuel prizes, may be rounded down so that prizes can be paid in multiples of whole dollars. Breakage resulting from rounding these prizes shall be carried forward to the prize pool for the next Drawing.

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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Bob Biard

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5012



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §157.4

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.4, Computation of Time; Mailbox Rule, without changes to the proposed text as published in the December 7, 2018, issue of the *Texas Register* (43 TexReg 7847). The rules will not be republished.

The amendments are recommended for adoption by the TALCB Enforcement Committee to provide additional guidance to applicants, license holders, and members of the public and clarify the requirements for computing time under the TALCB Rules.

The reasoned justification for the amendments is to provide additional clarity and guidance to applicants, license holders, and members of the public.

No comments were received on the amendments as published.

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

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

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

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Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652



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

22 TAC §159.104

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §159.104, Primary Contact; Appraiser Contact; Controlling Person; Contact Information, without changes to the proposed text as published in the December 7, 2018, issue of the *Texas Register* (43 TexReg 7849).

The amendments are recommended by the TALCB Executive Committee and members of the Appraisal Management Company (AMC) Advisory Committee to allow AMCs to designate more than one controlling person.

The reasoned justification for the amendments allowing AMCs to designate more than one controlling person is to expand the pool of candidates eligible to serve as members of the AMC Advisory Committee.

No comments were received on the amendments as published.

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

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

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

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Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652



PART 11. TEXAS BOARD OF NURSING

CHAPTER 221. ADVANCED PRACTICE NURSES

22 TAC §§221.2 - 221.5, 221.7 - 221.10

Introduction

The Texas Board of Nursing (Board) adopts amendments to §§221.2 - 221.5 and §§221.7 - 221.10. The Board is also simultaneously adopting the repeal of §221.4 and §221.11 elsewhere in this edition of the *Texas Register*. No changes are being made to §221.1, §221.6, or §§221.12 - 221.17. The amendments to §221.2, concerning APRN Titles and Abbreviations, and §221.4, concerning Licensure as an APRN, are adopted with changes to the proposed text as published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6753).

Changes to the Adopted Text. The Board received three written comments on the proposal. In response to the written comments on the published proposal, the Board has made changes to the title of the section, §221.2(b) and (c), and §221.4(a)(8)(B) and (10) as adopted. None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Further, the Board believes these changes address some of the commenters' concerns.

Background

In January 2012, the Board issued a charge to its Advanced Practice Nursing Advisory Committee (Committee) to review Chapter 221 and make recommendations for changes. The Committee met from July 2012 to September 2013 to review and discuss proposed changes to Chapter 221. After its discussions, the Committee voted to recommend proposed changes to the Board for adoption. The Board considered the proposed changes, the Committee's recommendations, and Staff's recommendations at its April 2014 meeting. Following discussion and deliberation, the Board voted to approve the publication of the proposed changes in the *Texas Register*. The Board received several public comments on the proposal, which were considered by the Board at its July 2014 meeting. The Board, at that time, voted to withdraw the rule amendments for re-consideration at a later date.

The Committee re-convened on May 9, 2018, to again consider the Board's original 2012 charge regarding the review of Chapter 221. The proposed changes were discussed and approved by the Committee. The Board considered the proposed amendments, the Committee's recommendations, and Board Staff's recommendations at its regularly scheduled meeting on July 19-20, 2018, and voted to approve the publication of

the proposed amendments in the *Texas Register* for public comment. The Board received three written comments during the public comment period. These comments were considered by the Board at its January 2019 meeting, and the Board voted to adopt the rule with the changes set out in this adoption order.

Overview of the Adopted Amendments

In general, the majority of the adopted amendments are editorial in nature and primarily re-organize and/or re-arrange the existing provisions of the rule. The substantive changes of each section are highlighted in more detail in the following paragraphs.

The title of the chapter has been amended in response to comments to ensure that the term "registered" is included. As a result, the title of the chapter, as adopted, reads "Advanced Practice Registered Nurses".

Section 221.2 addresses APRN titles and abbreviations.

Adopted §221.2(a) specifies the four roles that an APRN may be licensed in and includes the population focus areas that will be recognized for each role. The four enumerated roles are consistent with those specified in the Occupations Code §301.152(a), as well as those recommended by the APRN Consensus Model. A role and population focus area that was recognized under the Board's former rule, but is not contained in subsection (a) as adopted, is addressed separately in adopted §221.7, relating to waivers.

The adopted amendments to §221.2(b) replace outdated terminology within the rule text and clarify the minimum expectations for use of APRN titles. The Board has changed the rule text in subsection (b) as adopted in response to comments. Commenters felt that the proposed rule was unclear as proposed with regard to the term 'title'. The adopted rule text more clearly defines this term by specifying that a title is comprised of the "APRN" designation and the APRN's current role and population focus area.

The language in adopted §221.2(c) was relocated from former §221.11 for better overall organization and readability of the section. The Board has also changed the rule text in subsection (c) as adopted in response to commenters. Commenters felt that the proposed rule was unclear regarding the use of APRN credentials. The rule text as adopted addresses this issue by clarifying the minimum information that must be utilized by an APRN in his/her identification, as well as additional information that may be utilized by an APRN in his/her identification in addition to the required information.

The adopted changes to §221.3(a) re-organize the definitions within the section for better overall organization and readability of the section. The section also includes changes for consistency with recommended provisions of the APRN Consensus Model and the essentials of masters/doctoral coursework. The adopted changes to subsections (b), (c), and (d) are largely editorial and re-word and re-organize the subsections for additional clarity and better organization. The rule also specifies how an academic year is evaluated for additional clarity. Adopted §221.3(e) - (g) have been re-worded to clarify the educational requirements all APRNs must meet, in all four roles, including the elements that must be included in each of the required courses. The adopted changes to subsections (h) - (j) clarify the review process for applicants in multiple roles or population foci and the educational requirements that an individual must meet in order to be licensed in more than one role and population focus area.

The former text in §221.4 is being repealed elsewhere in this edition of the *Texas Register*. Adopted §221.4 includes provisions that were formerly in the Board's rule but have been re-ordered and/or clarified and are new to this adopted section. The adopted amendments to subsection (a) specify the requirements an applicant must meet for APRN licensure. In general, an applicant must submit the required fee, verification of licensure or a privilege to practice in Texas as a registered nurse, and proof of graduation from an APRN graduate or post-graduate program. Additionally, the number of clinical hours completed and the courses completed, including advanced physiology and pathophysiology, advanced health assessment, and advanced pharmacology, must be verified. Each APRN must also have passed the appropriate APRN national certification examination appropriate for the applicant's role and population focus area. Each applicant must also answer the Board's eligibility questions. In general, these are not new requirements, although they may have appeared elsewhere in the Board's former rule.

For those individuals who have reason to believe they may be ineligible for APRN licensure due to criminal history, substance use disorder, or mental health issues, for example, the adopted section includes a new declaratory order process for APRNs, similar to the existing Board process for vocational and professional nursing licensure. For those individuals wishing to file a declaratory order, the rule sets forth the requirements that must be met. While the rule does not require an applicant to file a declaratory order, it does provide a formalized process for those individuals wishing to do so. The process allows these applicants to learn if they are eligible for APRN licensure, and under what conditions, prior to applying for admission into an APRN program and/or prior to seeking APRN licensure. This allows these individuals to make informed decisions about their potential licensure opportunities.

The rule also includes a formalized process for applicants wishing to endorse into Texas and for the licensure of internationally educated APRN applicants. These changes conform the rule text to the Board's current practices in these areas. The section also includes requirements for the completion of 400 hours of current practice within the last 24 months in the APRN role and population focus area for which the applicant is applying, unless the applicant completed an APRN program within the last 24 months instead. If an applicant is unable to meet these practice requirements, and depending on how long the applicant has been out of practice, the section outlines a process by which the applicant will be required to complete a refresher course or extensive orientation. The rule also clarifies that applicants who wish to practice in more than one role and population focus area must complete education sufficient to meet the requirements of the section for each role and population focus area.

Proposed §221.5 is a new section and contains the standards that the Board will consider when determining whether a certification examination may be used to satisfy a requirement for APRN licensure under the chapter. The adopted requirements are consistent with current guidelines for the approval of national certification examinations and are consistent with the Board's current process of review. Additionally, this rule is intended to aid in the review of new certification exams that are developed but have not yet been reviewed by other national accrediting/licensing entities. In those cases, this process could be used to determine if the certification exam would be acceptable for meeting the chapter's requirements for licensure.

Section §221.7 contains waiver provisions. This section contains editorial changes and has been re-organized for clarity. Several subsections from the Board's former rule have also been combined in the adopted new section for better organization. There are also a few more substantive changes that warrant comment.

Like the Board's former rule, the adopted section contains exemptions for the completion of a national certification exam in certain, specified circumstances. Likewise, waiver from the chapter's master's degree requirements may be available for qualified certificate prepared nurse midwives and women's health care nurse practitioners in certain, specified circumstances. The section continues to include currently grandfathered titles, with the exception that the title of Neonatal Clinical Nurse Specialist is being removed from the section. Because a national certification exam now exists for this title, an exemption is no longer necessary.

The rule also contains new titles that may be considered under the exemption provision because the former national certification exams that related to these titles no longer exist, and an exemption may be necessary for individuals completing these programs to become licensed. These titles are specified in adopted §221.7(e)(2). The rule also includes exemptions from specific curricular requirements for certain applicants based upon Board rules that were in effect at the time the applicant completed his/her educational program. The section also includes a process for APRNs who are endorsing into Texas from another state and who may lack an academic course credit in advanced health assessment, advanced physiology and pathophysiology, or advanced pharmacotherapeutics to practice in a limited capacity while they complete the necessary course. Finally, the requirements related to provisional approval have been deleted, as the Board has not granted provisional approval (graduate approval) in several years. This change is necessary to conform the rule text to the Board's practices in this regard.

Adopted §221.8 contains the requirements related to APRN licensure renewal. The adopted changes re-organize the section for better clarity and readability but do not make any substantial changes to the content of the rule text.

Adopted §221.9 contains requirements related to inactive status. Generally, the changes are editorial in nature. Because an APRN must meet the requirements set forth in Board Rule §217.9 (relating to Inactive and Retired Status) in order to place his/her license in inactive status, the adopted section makes a conforming change to the rule text in this regard for additional clarity.

The majority of the changes to §221.10 are editorial in nature and do not affect the existing content of the rule. There are a few substantive changes, however. First, the adopted rule includes requirements related to a preceptor providing the supervised clinical component of a refresher course or extensive orientation. The rule also adopts by reference the Board's existing guidelines regarding APRN refresher course/extensive orientation requirements. These requirements were included in the rule for consistency with the Board's existing practices and for additional clarity. The section also includes a new process for enabling an APRN who has not practiced in the APRN role and population focus area within the past twenty-four calendar months to obtain a six month permit in order to complete the required practice hours necessary for the reactivation of his/her license.

Summary of Comments Received

General Comments- Definitions and the APRN Consensus Model

A commenter representing the Texas Medical Association (TMA) states that TMA objects to the proposed rules because, while the proposal may be more consistent with the APRN Consensus Model, it departs from consistency with state law. The commenter states that the Texas Legislature has not recognized the Consensus Model as the standard for nursing practice and the Board's proposed rules do not clearly place limits on the applicability of the Consensus Model. Because of fundamental differences between the Consensus Model and Texas law, TMA strongly urges the Board to withdraw the proposed rules.

The commenter states that the Consensus Model provides a definition of an APRN and articulates educational requirements and scopes of services that APRNs in different roles and with different foci provide. In many ways, these standards directly contradict the standards for and scope of APRN practice established by the Texas Legislature, and for this reason alone, the commenter states that the Consensus Model should not be directly followed for nursing regulation in Texas. For instance, the commenter states that the Consensus Model adopts a position that APRNs are fully independent practitioners who must, at their own discretion, recognize limits of knowledge and experience. The commenter states that this wholly contradicts the limitations on scope imposed by the Texas Legislature. The Nursing Practice Act (NPA) clearly defines the practice of nursing and does not authorize an APRN's independent practice. The NPA instead clearly identifies that many acts performed by APRNs require physician delegation and supervision before the APRN can perform them.

As further examples, the commenter states that the Consensus Model adopts a definition of an APRN that includes authority to diagnose and to exercise independent prescriptive authority. The commenter further states that Texas law expressly omits diagnosis from the scope of the practice of nursing, and Texas law requires that any prescription of medications by an APRN must be done under a prescriptive authority agreement. Here again, the commenter states, the Consensus Model takes positions that are in direct conflict with Texas law.

The commenter continues by stating that, because the Consensus Model adopts a position that is so fundamentally different than what Texas law authorizes, it should not be taken as a model for nursing practice in Texas. Even if the Consensus Model standards that the Board proposes to adopt relate only to educational requirements, the commenter states that the mere use of Consensus Model terminology will still cause confusion. The commenter states that because the Board announces in this rule proposal that it is following the Consensus Model, one might assert that all elements of the Consensus Model apply.

For example, the Board proposes to use the term "APRN role" in rule as part of the designation of a licensed APRN. The commenter states that these "APRN roles" come from and are based on the Consensus Model. Because the proposed rules do not place limits on or more narrowly define an "APRN role" to be limited according to the NPA, the commenter states that the proposed rules could suggest that one's scope in a particular APRN role is as broad as the role is determined to be under the Consensus Model, which is, as has already been pointed out, directly in conflict with Texas law.

The commenter continues by stating it is strongly opposed to the use of the APRN Consensus Model as a foundation for the

regulation of nursing practice in Texas. Using it will likely lead to confusion and misunderstanding about the authority for an APRN's scope of practice, suggesting that it is the Consensus Model, rather than state law, that establishes that scope. TMA accordingly recommends that the Board withdraw the proposed rules. Alternatively, TMA states, that if the Board chooses not to withdraw the proposed rules, the Board must at least make it clear that use of terminology found in the Consensus Model does not change an APRN's scope of practice which is statutorily defined, and that an APRN's scope of practice is still governed by the NPA. The commenter recommends adding clarifying language to the rule in this regard.

A commenter representing the Texas Society of Anesthesiologists (TSA) states that the National Council of State Boards of Nursing ("NCSBN") APRN Consensus Model made the basis of the Board's proposal is not consistent with Texas law and that the proposed rules should be withdrawn. The commenter states that the Consensus Model is a publication developed by the NCSBN that gives the APRN title to four roles of advanced practice nurses and advocates for multi-state licensure and independent practice for APRNs. The Consensus Model seeks conformity among the states, and nursing trade organizations promote the Consensus Model as simple "name change" language and as providing greater uniformity for training requirements. But, the real purpose behind the NCSBN Consensus Model, the commenter states, is to advance independent practice for advanced practice nurses, as reflected by statements found on NCSBN's website and related NCSBN publications. The commenter continues by stating that, among the stated purposes of the Consensus Model is improving patient access to care by allowing APRNs to practice without physician supervision, collaboration or oversight. The commenter states that recent studies include findings contrary to the stated purposes of the NCSBN Consensus Model. The commenter states that the U.S. Department of Veterans Affairs' Internal Quality Enhancement Research Initiative Study titled "Evidence Brief: The Quality of Care Provided by Advanced Practice Nurses" raised questions about the safety of nurse-only care, finding evidence supporting a conclusion of equal outcomes with or without physician participation ranged from "insufficient" to "low". Recent publications promoting over-riding state scope-of-practice laws argue that a large body of evidence shows APRNs working independently provide the same quality of care as medical doctors, but the commenter states that TSA found scarce long term evidence to justify this position. The commenter goes on to say that, by way of example, several recent studies have examined the impact of state Medicare opt-out policies on access and costs of surgeries and other procedures requiring anesthesia services. In 2001, the federal government issued rules allowing states to opt out of Medicare's requirement that a physician supervise the administration of anesthesia by a nurse anesthetist. Seventeen states have followed the option, citing increased access to anesthesia care and cost control as the primary reasons. Schneider studied data for inpatient and outpatient surgeries, both before and after opt-out, and compared these data sets to non-opt-out states. The study found no evidence to support the belief that access to anesthesia services improved by increasing the scope of practice of nurse anesthetists. Likewise, there was no significant reduction in cost attributable to the elimination of physician participation.

The commenter continues by stating that the NCSBN website includes an "APRN Consensus Toolkit", featuring talking points, tips on communicating with legislators, scope of practice pub-

lications supporting APRN independent practice, promotional videos, sample form letters, and a handbook for legislators.

General Comments - Diagnosis

A commenter representing TMA states that, throughout the proposed rules and the preamble to the proposed rules, the Board refers to a nurse's ability to diagnose or required education requirements that would teach a nurse to diagnose. TMA strongly opposes any proposed rule to the extent that it represents that an APRN has the authority to diagnose because such representation is in direct conflict with state law. Thus, the commenter states that if the Board chooses not to withdraw these proposed rules, TMA strongly urges the Board to align the proposed rules with Texas law.

The commenter states that the definition of professional nursing in the NPA expressly provides that professional nursing "does not include acts of medical diagnosis." Indeed, to provide a diagnosis is the practice of medicine, and unless the Legislature authorizes a health professional to practice some aspect of the practice of medicine, that practice is unauthorized and is outside the scope of practice laid out by the Legislature. The commenter states that, despite clear guidance from the Legislature, the Board is proposing and has adopted rules that represent nurses or APRNs as being authorized to diagnose physical conditions. For example, the Board states that an APRN's scope of practice includes diagnosing and treating patients within the APRN's authorized role and population focus area. The commenter states that the Board's representations about an APRN's scope of practice directly contradicts state law and also demonstrates the trouble with proposing rules in order to come into alignment with the Consensus Model. By stating that APRNs diagnose and treat within the "authorized role and population focus area"--terms employed by the Consensus Model--the Board appears to be more concerned with what the Consensus Model says than what state law says.

Further, the commenter states that the proposed rules require in proposed §221.3(a)(1), that advanced health assessment courses offer "clinical experience such that students gain the knowledge and skills needed to . . . make diagnoses of health status." The commenter states that it is unclear how an APRN-in-training will gain clinical experience to develop knowledge and skills to diagnose if the APRN or even its course instructors (if they are not physicians) are not authorized to diagnose. The commenter states that the proposed rules in §221.3(f)(2) would also require the completion of courses in "diagnosis and management of diseases," which is defined elsewhere as a "course offering both didactic and clinical content in clinical decision-making and aspects of medical diagnosis and medical management of diseases and conditions." The commenter re-iterates that APRNs have no authority under state law to provide medical diagnosis or medical management of diseases, so learning to do these acts is unnecessary and may mislead an APRN-in-training into wrongly believing that diagnosing is within an APRN's scope of practice in the state of Texas. TMA again strongly urges the Board to withdraw the proposed rules, but if the Board does not withdraw the rules, the commenter recommends amending its rules that represent that APRNs have or can be trained to have authority to provide acts of medical diagnosis. Further, TMA urges the Board to correct representations made in the rule proposal's preamble that diagnosis is within an APRN's scope of practice.

A commenter representing TSA states that the NPA prohibits the Board from adopting rules that expand the scope of practice

of APRNs to include diagnosis of medical conditions. The commenter states that §301.151 of the Texas Occupations Code says the Board may adopt and enforce rules consistent with the NPA. Section 301.152 authorizes the Board to adopt rules for licensure of registered nurses as ARPNS and provides guidance for education, training, and prescriptive authority requirements. Absent from the authorizing statute is any reference to medical diagnosis. The commenter states that, for good reason, §301.002 of the NPA, defining "Professional Nursing," does not include acts of medical diagnosis. Section 301.002 lists many examples of healthcare tasks and activities that are encompassed within the scope of practice of registered nurses, including APRNs, but medical diagnosis is noticeably absent and expressly excluded. The commenter continues by stating that §301.002(2)(G) of the NPA states that a nurse licensed by the Board may perform medical acts delegated by a physician under authority provided by the Medical Practice Act (Occupations Code Chapter 157), but a review of the enumerated sections of the Medical Practice Act confirms that medical diagnosis is not among the acts that may be delegated by a physician to a nurse under any circumstances. The commenter states that APRNs do not practice independently in Texas and the Board's endorsement and adoption of the Consensus Model is inconsistent with Texas law. The Medical Practice Act allows physicians to delegate medical acts to non-physicians under certain circumstances. When considering delegation of medical acts to an APRN, the commenter states that the Medical Practice Act provides a two-step analysis. The commenter states that the Medical Practice Act includes numerous examples of the Texas Legislature's clear intent that APRNs perform medical acts only when those acts are delegated by a physician and performed under adequate physician supervision or a prescriptive authority agreement. The scope of "professional nursing" includes performance of those medical acts delegated under authority of the Medical Practice Act. The commenter goes on to say that, when an APRN performs a medical act pursuant to a physician order, the APRN is providing a service within the scope of professional nursing. A physician who delegates performance of medical acts to a person whom the physician knows or should know is unqualified to perform the acts or who fails to supervise adequately the activities of those acting under the physician's delegated authority may be disciplined. The commenter states that it is sometimes difficult to reconcile rules adopted by the Texas Medical Board and the Board when evaluating scope of practice issues. The commenter refers to a 1999 Texas Attorney General Opinion, Opinion No. JC-0117, issued by John Cornyn, in which the commenter states that the Attorney General determined that CRNAs administer anesthesia only by virtue of delegation from a physician. The Medical Practice Act does not require that a physician directly supervise the CRNA's selection and administration of anesthesia, and the extent of physician involvement after delegation is based on the physician's professional judgment in light of the standard of care, other federal and state laws, facility policies, medical staff bylaws, and ethical standards. While Section 157.058 authorizes a physician to delegate to a CRNA without requiring direct physician oversight, a physician is never required to do so. If a physician is concerned about a CRNA's ability to perform a delegated task or simply wishes to limit the delegation, the physician retains the authority to refrain from delegating to or to limit the delegation. The commenter states that the nature of a physician's responsibilities for medical acts delegated to a CRNA is discussed at length in the opinion. The commenter states that the Attorney General noted that when a CRNA

performs a delegated medical act, there is necessarily some overlap between the practice of medicine and the practice of nursing. "[T]hese tasks are within the practice of nursing for a CRNA, but only when the tasks are properly delegated to the CRNA by a physician."

The commenter goes on to state that the term "delegate" is not defined in the Medical Practice Act, and the Attorney General drew on other sources to state " ... the term 'delegate' denotes a deputization of one person, e.g., a CRNA, to act as the agent of the other, e.g., the physician." While concluding that the Medical Practice Act does not require a physician to directly supervise a CRNA in the performance of delegated anesthesia-related tasks, the Attorney General noted " ... nor does it absolve a physician of responsibility for an imprudent delegation." One case classification that differs from the analysis provided by Attorney General Cornyn concerns Medicare patients. Currently, federal regulations limiting Medicare coverage and conditioning hospital participation in Medicare and Medicaid programs require a CRNA to be supervised by a physician when the CRNA administers anesthesia.

The commenter continues by re-iterating that the Board has been a participant in developing the Consensus Model and APRN Compact for many years, and its Executive Director has served on the NCSBN APRN Committee for much of that time. The organizations involved in developing the NCSBN Consensus Model include 68 nursing trade organizations and four state nursing licensing agencies (Kentucky, Pennsylvania, Texas and Utah). According to the NCSBN website, two of those states (Kentucky and Utah) have allowed independent practice by APRNs and one (Utah) has approved independent prescribing. The extent of the Board's involvement in the NCSBN process may be considered by some to raise questions of conflict of interest, since the Consensus Model and APRN Compact would supersede Texas laws that require APRNs to practice under physician supervision, collaboration or oversight.

Under the APRN Compact, the commenter states, an APRN issued a multi-state license is authorized to assume responsibility and accountability for patient care independent of a supervisory or collaborative relationship with a physician. This authority may be exercised in the home state and in any remote state in which the APRN exercises a multi-state license privilege. The commenter states that the APRN Compact represents the ultimate goal of APRNs to achieve multi-state independent practice, free from individual state licensing laws and regulations and physician oversight. This model legislation is much different and much more radical than the Nurse Licensing Compact, adopted by the Texas legislature in 2017. Even so, the legislature specifically stated that any rule adopted by the interstate Commission on Nurse Licensing Compact administers that conflicts with the scope of practice of a Texas nursing license is unenforceable. In 2007, the Texas Legislature adopted a version of the APRN Compact. The Legislature chose to omit Article III of the compact because it allowed independent practice and conflicted with Texas law. The irreconcilable differences between the APRN Compact and Texas law have been recognized by the Board and its Executive Director. The commenter states that the Legislature's uncertainty about the NCSBN APRN Compact is illustrated by the fact that Chapter 305 of the Occupations Code expired in 2011 and is no longer law in Texas. Three states have adopted the NCSBN APRN Compact. Four states considered bills in 2018 that would have adopted the Compact, and all failed to pass. The commenter concludes by stating that TSA opposes

the proposed rules and urges the Board to withdraw them because they conflict with Texas law.

Agency Response to General Comments Regarding Definitions, the APRN Consensus Model, and Diagnosis:

The Board respectfully declines to withdraw the proposed amendments, as urged by the commenters. The Consensus Model was developed by the National Council of State Boards of Nursing as a uniform model of national nursing standards for APRNs. The Consensus Model was intended to address existing licensing inconsistencies among states, which can limit the mobility of APRNs and in turn, affect the availability of competent healthcare providers. However, the Board recognizes that its provisions are only suggestive and are not controlling law in the state of Texas, particularly where the Model's provisions conflict with existing state statute. This is not a situation unique to Texas, as other states must also consider the provisions of the Consensus Model in conjunction with their own controlling state laws. The commenters express a great deal of concern over the Board's reference to the Consensus Model in its preamble to the proposed rules. To the extent that the provisions of the Consensus Model are consistent with state law, the Board believes alignment with national licensing standards is a necessary and appropriate step in alleviating unnecessary licensure burdens for qualified and competent practitioners. However, neither the Board's preamble nor the Board's proposed rules contain provisions that contradict existing state statute. In fact, the Board has not proposed any rule amendment that authorizes the independent practice of APRNs in Texas, implies independent practice, or that changes the existing authorized scope of practice for an APRN, the existing standards of nursing practice for an APRN, or the requirements of the Medical Practice Act that relate to physician delegation, collaboration, supervision, or prescriptive authority.

A commenter states that the Medical Practice Act includes numerous examples of the Texas Legislature's clear intent that APRNs perform medical acts only when those acts are delegated by a physician and performed under adequate physician supervision or a prescriptive authority agreement. The Board does not disagree, nor has the Board proposed any amendment that would alter this interpretation of Texas law. The Board agrees that an APRN may only perform medical aspects of care through proper physician delegation, supervision, and collaboration. The Board also agrees that an individual must be properly educated and qualified to perform such delegated functions. If that were not the case, patient safety would be at optimum risk. As such, an APRN who receives delegated authority from a physician to perform medical aspects of care, to include prescribing medications through a prescriptive authority agreement, must be sufficiently educated to perform such delegated tasks. Physicians routinely delegate medical aspects of care to APRNs. If it were not so, an APRN could never issue a prescription under a prescriptive authority agreement because the APRN would not be able to diagnosis the underlying medical condition that the prescription was meant to treat. It is inconsistent, then, to state, on one hand, that a physician may delegate medical aspects of care to a qualified APRN, including diagnosis of the condition(s) for which the APRN will be issuing prescriptions under a prescriptive authority agreement, while, on the other hand, stating that the APRN cannot obtain the educational foundation in order to perform the medical aspects of care being delegated to him/her. The proposal does not imply that an APRN may provide medical aspects of care independent

of proper physician delegation, supervision, and collaboration. Rather, when an APRN is delegated medical aspects of care, he/she must be appropriately educated and trained to safely execute the delegated tasks. APRN educational programs are meant to ensure that APRN graduates are safe and competent to do just that. The Board's proposal does not expand an APRN's authorized scope of practice or alter the existing law in Texas in this regard.

To this end, the Board re-iterates that its reference to the Consensus Model in the preamble to the rule proposal should not be construed to mean that all elements of the Consensus Model apply in Texas or that an APRN may function in a manner that is not expressly authorized under, or is in conflict with, Texas law. The Board does not believe the proposed rules are confusing or misleading in this regard, and therefore, declines to include additional language in the rule text as adopted to clarify the same. Further, the Board re-iterates that the proposed amendments are consistent with existing state law and do not contradict any provision of the NPA or the Medical Practice Act.

General Comments - Titles

A commenter representing TMA states that it should be careful in its proposed rules to ensure that APRNs are properly identified to avoid confusion with other health professionals. The commenter states that that APRNs are licensed in a number of "roles" and "populations focus areas." Section 221.2(b) requires an APRN to use a "licensure title" granted by the Board. Because §221.2(a) describes "roles" and "population focus areas," the commenter states that it may not be clear what "title" is granted by the Board. Accordingly, TMA encourages the Board to amend the proposed rule to ensure that the rule uses consistent terminology so expectations and requirements for self-identification are clear. Ensuring that an APRN properly identify themselves is important, as it will assist patients in knowing more precisely the educational background and qualifications of the health professional providing services to them.

The commenter further states that §221.2(b) states that the APRN must "at a minimum," use the designation and title granted by the Board. The commenter states that it is unclear what other title an APRN might need to use to properly identify themselves or what restrictions there might be on these self-identifying titles. TMA cautions that the Board should not merely set a minimum on identification of APRNs without any clarification of what other titles must be used, so that an APRN could not use a title that might misrepresent the APRN's qualifications or educational background. If an APRN identifies themselves as an APRN with the appropriate role and population focus, there is no need for any further professional identification that could mislead. The commenter suggests amending subsection (b) to eliminate the phrase "'as a minimum', along with other editorial changes.

The commenter also recommends that the Board amend §221.2(c) in order to use consistent terminology. Subsection (c) requires an APRN to use the appropriate "designation." There is a risk of confusion because the term "designation" is not used in subsection (a) and because there is no cross-reference to specify the "designation" to which the BON is referring. TMA recommends editorial changes to subsection (c).

Agency Response to Comment: The Board agrees and has made changes to the rule text as adopted to clarify subsections (b) and (c).

General Comments - Title of Section

Summary of Comment: A commenter representing the Coalition for Nurses in Advanced Practice recommends amending the title of the chapter by inserting the word "Registered" so the title reads "Advanced Practice Registered Nurses".

Agency Response to Comment: The Board agrees and has made the recommended change to the rule text as adopted.

Comments Regarding §221.4(a)(8)(B) and (a)(10)

Summary of Comment: A commenter representing the Coalition for Nurses in Advanced Practice recommends amending the first line of §221.4(a)(8)(B) by changing "educational" to "education". The commenter recommends a similar change to (a)(10) by changing "educational" to "education" at the beginning of the second line. These changes are consistent with the use of the term "education requirement" used in proposed new §221.5(3), and §221.7(d), (f) and (g).

Agency Response to Comment: The Board agrees and has made the recommended change to the rule text as adopted.

Names of Those Commenting For and Against the Proposal.

For: None.

Against: Texas Medical Association; Texas Society of Anesthesiologists.

For, with changes: Coalition for Nurses In Advanced Practice .

Neither for nor against, with changes: None.

Statutory Authority. The amendments are adopted under the authority of the Occupations Code §301.151 and §301.152(a) - (c).

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 301.152 (a) defines "advanced practice registered nurse" as a registered nurse licensed by the Board to practice as an APRN on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

Section 301.152(b) provides that the Board shall adopt rules to: (1) license a registered nurse as an APRN; (2) establish any specialized education or training, including pharmacology, that an APRN must have to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054; a system for approving an APRN to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054 on the receipt of evidence of completing the specialized education and training requirement under paragraph (A); and a system for issuing a prescription authorization number to an APRN approved under paragraph (B); and (3) concurrently renew any license or approval granted to an APRN under this subsection and a license renewed by the APRN under Section 301.301.

Section 301.152(c) states that, at a minimum, the rules adopted under subsection (b)(2) must: require completion of pharmacology and related pathophysiology education for initial approval; and (2) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under Section 301.303.

§221.2. APRN Titles and Abbreviations.

(a) An advanced practice registered nurse (APRN) must be licensed in one or more of the following roles and population focus areas:

(1) Roles:

- (A) Certified Nurse-Midwife (CNM);
- (B) Certified Nurse Practitioner (CNP);
- (C) Certified Registered Nurse Anesthetist (CRNA);

and/or

(D) Clinical Nurse Specialist (CNS);

(2) Population focus areas:

(A) Adult-gerontology:

- (i) Acute care; and/or
- (ii) Primary care;

(B) Family/individual across the lifespan;

(C) Neonatal;

(D) Pediatrics:

- (i) Acute care; and/or
- (ii) Primary care;

(E) Psychiatric/mental health; and/or

(F) Women's health/gender-related.

(b) A registered nurse who holds current licensure issued by the Board as an APRN shall, at a minimum, use the designation "APRN" and the APRN licensure title, which consists of the current role and population focus area, granted by the Board.

(c) When providing care to patients, the APRN shall wear and provide clear identification that includes the current APRN designation and licensure title being utilized by the APRN, as specified by this section. An APRN may also include additional certifications or educational credentials in his/her identification, so long as the certifications and/or credentials are current, accurate, and not misleading as to their meaning.

(d) Unless licensed as an APRN by the Board as provided in this chapter, an individual shall not:

(1) claim to be an APRN or hold himself/herself out to be an APRN in this state; and/or

(2) use a title or any other designation tending to imply that the person is an APRN.

(e) An individual who violates subsection (c) or (d) of this section may be subject to discipline under the Nursing Practice Act and Board rules.

§221.4. Licensure as an APRN.

(a) Application for Initial Licensure as an APRN.

(1) An applicant for licensure as an APRN in this state shall submit to the Board the required fee specified in §223.1 of this title

(relating to Fees), verification of licensure or privilege to practice as a registered nurse in Texas, and a completed application that provides the following information:

(A) Graduation from an APRN graduate or post-graduate program, as evidenced by official documentation received directly from an APRN education program accredited by a nursing accrediting body that is recognized by the Board and the U.S. Secretary of Education and/or the Council for Higher Education Accreditation (CHEA), or its successor organization, as recognized by the Board; and

(B) Documentation of education shall verify the date of graduation; credential conferred; number of clinical hours completed; completion of three separate graduate level courses in advanced physiology and pathophysiology; advanced health assessment; advanced pharmacology that includes pharmacodynamics, pharmacokinetics, and pharmacotherapeutics of all broad categories of agents; role and population focus area of the education program; and evidence of meeting the standards of APRN education set forth in this rule.

(2) In order to be licensed in this state, all APRN applicants must be currently licensed as a registered nurse in Texas or hold a current privilege to practice as a registered nurse in Texas.

(3) In order to be licensed in this state, all APRN applicants must take and pass the appropriate APRN national certification examination in the APRN role and population focus congruent with the applicant's educational preparation. Only those national certification examination(s) recognized by the Board for each APRN role and population focus area shall be accepted. Certification must remain current at all times.

(4) Identification of any state, territory, or country in which the applicant holds or previously held a professional license or credential, if applicable, must be provided. Required information includes:

(A) The number, type, and status of the license or credential; and

(B) The original state or country of licensure or credentialing.

(5) An applicant must provide the date and jurisdiction the applicant previously applied for a license in another jurisdiction and either was denied a license, withdrew the application, or allowed the application to expire, as applicable.

(6) An applicant must provide a detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's eligibility for licensure.

(7) An individual who has reason to believe that he or she may be ineligible for APRN licensure or prescriptive authorization may petition the Board for a declaratory order as to his or her eligibility by submitting a petition, on forms provided by the Board, and the fee required in §223.1 of this title (relating to Fees).

(A) The petition shall include:

(i) a statement by the individual indicating the reason(s) and basis of his/her potential ineligibility;

(ii) if the potential ineligibility is due to the individual's criminal history, all court documents, including, but not limited to: indictments, agreements for pre-trial diversion or deferred prosecution, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, as applicable;

(iii) if the potential ineligibility is due to the individual's mental health condition or diminished capacity, verifiable and reliable evidence of controlled behavior and consistent compliance with

recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, as applicable;

(iv) if the potential ineligibility is due to the individual's substance use disorder and/or the abuse/misuse of alcohol or drugs, verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol, which may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance; and

(v) an evaluation that meets the criteria of the Occupations Code §301.4521 and §213.33 of this title (relating to Factors Considered for Imposition of Penalties/Sanctions), if applicable.

(B) Once the Board has received all necessary information, including the information required by subparagraph (A) of this paragraph, an investigation shall be conducted. The investigation will be based upon an evaluation of the individualized factors of the case, the potential risk of harm the individual's practice may pose to patients/clients and/or the public, and the individual's ability to meet the requirements of §213.27 (relating to Good Professional Character), §213.28 (relating to Licensure of Individuals with Criminal History), and §213.29 (relating to Fitness to Practice) of this title, as applicable. Based upon the individualized facts of the case, the Board may approve licensure or prescriptive authorization without encumbrance, impose probationary conditions or restrictions on the individual's ability to practice advanced practice nursing in this state, or limit or deny licensure or prescriptive authorization.

(C) If the Executive Director proposes to find the individual ineligible for licensure or prescriptive authorization, the individual may obtain a hearing before the State Office of Administrative Hearings (SOAH). The Executive Director shall have discretion to set a hearing and give notice of the hearing. The hearing shall be conducted in accordance with §213.22 of this title (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of the Board).

(D) An individual whose petition is denied may re-petition or seek licensure or prescriptive authorization after the expiration of one year from the date of the proposal to deny eligibility.

(8) An applicant must attest, on forms provided by the Board, to having completed a minimum of 400 hours of current practice with the last 24 calendar months in the APRN role and population focus area for which the applicant is applying, unless the applicant has completed an APRN education program in the advanced practice role and population focus area within the last 24 calendar months.

(A) If less than four years, but more than two years, have lapsed since completion of the APRN education program, and/or the applicant does not have 400 hours of current practice in the APRN role and population focus area during the previous 24 calendar months, the APRN shall be required to demonstrate proof of completion of 400 hours of current practice obtained under the direct supervision of a qualified preceptor who meets the requirements of §221.10 of this chapter (relating to Reactivation or Reinstatement of APRN Licensure).

(B) If more than four years have lapsed since completion of the APRN education program, and/or the applicant has not practiced in the APRN role during the previous four years, the applicant shall successfully complete a refresher course or extensive orientation in the appropriate APRN role and population focus area that includes a supervised clinical component by a qualified preceptor who meets the requirements of §221.10 of this chapter.

(i) The course(s)/orientation shall be of sufficient length to satisfy the learning needs of the applicant and to assure

that he/she meets the minimum standard for safe, competent care and include a minimum of 400 hours of current practice as described in this paragraph. The course(s)/orientation shall cover the entire scope of the authorized APRN role and population focus area. Content shall comply with the requirements specified in the form titled "Requirements for APRN Refresher Course or Extensive Orientation", which is adopted by reference in §221.10 of this chapter.

(ii) The preceptor must provide written verification of satisfactory completion of the refresher course/extensive orientation on forms provided by the Board and assurance that the individual has reviewed current practice-related information pertinent to his/her APRN role and population focus area.

(9) An applicant must attest, on forms provided by the Board, to having obtained 20 contact hours of continuing education within the last 24 calendar months appropriate for the APRN role and population focus area for which the applicant is applying. Continuing education in the APRN role and population focus area must meet the requirements of Chapter 216 of this title (relating to Continuing Competency). The 20 contact hours required for RN licensure may be met by the 20 hours required by this paragraph.

(10) APRN applicants who wish to practice in more than one role and/or population focus area shall complete additional education in the desired area(s) of licensure in compliance with the education requirements set forth in this chapter and meet all requirements for licensure in each additional role or population focus area. To apply for licensure for more than one role and/or population focus area, the applicant shall submit a separate application and fee for each desired role and/or population focus area. Additional licensure is required for those licensed APRNs seeking to include an additional:

- (A) APRN role and population focus area;
 - (B) Population focus area within the same APRN role;
- or
- (C) APRN role within the same population focus area.

(b) Licensure of an Internationally Educated APRN.

(1) An internationally educated applicant for licensure as an APRN in Texas shall:

(A) Graduate from a graduate or post-graduate level APRN education program equivalent to an APRN education program in the United States that is accepted by the Board. All curricular requirements set forth in this rule must be met.

(B) Submit documentation through an official transcript directly from the international nursing education program and an original Credential Evaluation Service (CES) Full Education course-by-course report, sent directly from an approved organization for the license being sought.

(2) An internationally educated APRN applicant shall meet all other licensure criteria required of applicants educated in the United States.

(c) Application for Licensure by Endorsement.

(1) An applicant for licensure by endorsement as an APRN in this state shall submit to the Board the required fee as specified in §223.1 of this title, verification of licensure or privilege to practice as a registered nurse in Texas, and a completed APRN application that provides the following information:

(A) Graduation from a graduate or post-graduate level APRN education program, as evidenced by an official transcript or other official documentation received directly from a graduate program

accredited by a nursing accrediting body that is recognized by the U.S. Secretary of Education and/or Council for Higher Education Accreditation, or its successor organization, as acceptable by the Board.

(B) Documentation of education shall verify the date of graduation; credential conferred; number of clinical hours completed; completion of three separate graduate level courses in advanced physiology and pathophysiology, advanced health assessment, and advanced pharmacology that includes pharmacodynamics, pharmacokinetics, and pharmacotherapeutics of all broad categories of agents; role and population focus area of the education program; and evidence of meeting the standards of nursing education in this rule.

(2) An applicant must provide evidence of current certification by a national certifying body in the APRN role and population focus area appropriate to the APRN educational preparation. National certifications accepted for APRN licensure shall meet the requirements for national certification programs set forth in this rule. Primary source verification of certification is required.

(3) An applicant must attest, on forms provided by the Board, to having completed a minimum of 400 hours of current practice within the last 24 calendar months in the APRN role and population focus area for which the applicant is applying, unless the applicant has completed an APRN education program in the APRN role and population focus area within the last 24 calendar months.

(A) If the applicant has not been in clinical practice in the APRN role and population focus area for at least 400 hours within the past two years, the applicant shall provide evidence of:

(i) Satisfactory completion of 20 contact hours of continuing education within the two years prior to applying for licensure; and

(ii) If less than four years but more than two years have lapsed since completion of the APRN education program and/or the applicant does not have 400 hours of current practice in the APRN and population focus area during the previous 24 calendar months, the APRN shall be required to demonstrate proof of completion of 400 hours of current practice obtained under the direct supervision of a qualified preceptor who meets the requirements of §221.10 of this chapter.

(B) If the applicant has not been in clinical practice for more than the past four years, the applicant shall provide evidence of satisfactory completion of 45 contact hours of pharmacotherapeutics within the two years prior to application. The applicant must also successfully complete a refresher course or an extensive orientation in the appropriate APRN role and population focus area that includes a supervised clinical component by a qualified preceptor who meets the requirements of §221.10 of this chapter.

(C) The course(s)/orientation shall be of sufficient length to satisfy the learning needs of the applicant and to assure that he/she meets the minimum standard for safe, competent care and include a minimum of 400 hours of current practice as described in this paragraph. The course(s)/orientation shall cover the entire scope of the authorized APRN role and population focus area. Content shall comply with the requirements specified in the form titled "Requirements for APRN Refresher Course or Extensive Orientation", which is adopted by reference in §221.10 of this chapter.

(D) The preceptor must provide written verification of satisfactory completion of the refresher course/extensive orientation on forms provided by the Board and assurance that the individual has reviewed current practice-related information pertinent to his/her APRN role and population focus area.

(4) Identification of any state, territory, or country in which the applicant holds a professional license or credential, if applicable, must be provided. Required information includes:

(A) The number, type, and status of the license or credential; and

(B) The original state or country of licensure or credentialing.

(5) An applicant must provide the date and jurisdiction the applicant previously applied for a license in another jurisdiction and either was denied a license, withdrew the application, or allowed the application to expire, as applicable.

(6) An applicant must provide a detailed explanation and supporting documentation for each affirmative answer to questions regarding the applicant's eligibility for licensure.

(7) An individual who has reason to believe that he or she may be ineligible for APRN licensure or prescriptive authorization may petition the Board for a declaratory order as to his or her eligibility by submitting a petition, on forms provided by the Board, and the fee required in §223.1 of this title (relating to Fees).

(A) The petition shall include:

(i) a statement by the individual indicating the reason(s) and basis of his/her potential ineligibility;

(ii) if the potential ineligibility is due to the individual's criminal history, all court documents, including, but not limited to: indictments, agreements for pre-trial diversion or deferred prosecution, orders of deferred adjudication, judgments, probation records, and evidence of completion of probation, as applicable;

(iii) if the potential ineligibility is due to the individual's mental health condition or diminished capacity, verifiable and reliable evidence of controlled behavior and consistent compliance with recommended treatment, including compliance with a prescribed medication regime, for a reasonable amount of time, as applicable;

(iv) if the potential ineligibility is due to the individual's substance use disorder and/or the abuse/misuse of alcohol or drugs, verifiable and reliable evidence of sobriety and abstinence from drugs and alcohol, which may include evidence of the completion of inpatient, outpatient, or aftercare treatment, random drug screens, individual or group therapy, and/or support group attendance; and

(v) an evaluation that meets the criteria of the Occupations Code §301.4521 and §213.33 of this chapter (relating to Factors Considered for Imposition of Penalties/Sanctions), if applicable.

(B) Once the Board has received all necessary information, including the information required by subparagraph (A) of this paragraph, an investigation shall be conducted. The investigation will be based upon an evaluation of the individualized factors of the case, the potential risk of harm the individual's practice may pose to patients/clients and/or the public, and the individual's ability to meet the requirements of §213.27 (relating to Good Professional Character), §213.28 (relating to Licensure of Individuals with Criminal History), and §213.29 (relating to Fitness to Practice) of this title, as applicable. Based upon the individualized facts of the case, the Board may approve licensure or prescriptive authorization without encumbrance, impose probationary conditions or restrictions on the individual's ability to practice advanced practice nursing in this state, or limit or deny licensure or prescriptive authorization.

(C) If the Executive Director proposes to find the individual ineligible for licensure or prescriptive authorization, the individual may obtain a hearing before the State Office of Administrative

Hearings (SOAH). The Executive Director shall have discretion to set a hearing and give notice of the hearing. The hearing shall be conducted in accordance with §213.22 of this title (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of the Board).

(D) An individual whose petition is denied may re-petition or seek licensure or prescriptive authorization after the expiration of one year from the date of the proposal to deny eligibility.

(8) APRN applicants who wish to practice in more than one role and/or population focus area shall complete additional education in the desired area(s) of licensure in compliance with the educational requirements set forth in this chapter and meet all requirements for licensure in each additional role or population focus area. To apply for licensure for more than one role and/or population focus area, the applicant shall submit a separate application and fee for each desired role and/or population focus area. Additional licensure is required for those licensed APRNs seeking to include an additional:

(A) APRN role and population focus area;

(B) Population focus area within the same APRN role; or

(C) APRN role within the same population focus area.

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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Jena Abel

Deputy General Counsel

Texas Board of Nursing

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



22 TAC §221.4

The Texas Board of Nursing (Board) adopts the repeal of §221.4. The Board is adopting amendments to §§221.2 - 221.5 and §§221.7 - 221.10 and the repeal of §221.11 elsewhere in this issue of the *Texas Register*. No changes are being made to §221.1, §221.6, or §§221.12 - 221.17. The repeal is being adopted without changes to the proposed text published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6766).

Background

In January 2012, the Board issued a charge to the Advanced Practice Nursing Advisory Committee (Committee) to review Chapter 221 and make recommendations for changes. The Committee met from July 2012 to September 2013 to review and discuss proposed changes to Chapter 221. After its discussions, the Committee voted to recommend proposed changes to the Board for adoption. The Board considered the proposed changes, the Committee's recommendations, and Staff's recommendations at its April 2014 meeting. Following discussion and deliberation, the Board voted to approve the publication of the proposed changes in the *Texas Register*. The

Board received several public comments on the proposal, which were considered by the Board at its July 2014 meeting. The Board, at that time, voted to withdraw the rule amendments for re-consideration at a later date.

The Committee re-convened on May 9, 2018, to again consider the Board's original 2012 charge regarding the review of Chapter 221. The proposed changes, which were discussed and approved by the Committee. The Board considered the proposed amendments, the Committee's recommendations, and Board Staff's recommendations at its regularly scheduled meeting on July 19-20, 2018, and voted to approve the publication of the proposed amendments and both repeals in the *Texas Register* for public comment. The Board did not receive any comments on the proposed repeal of §221.4.

Overview of the Adopted Repeal

The former language of §221.4 has been repealed and replaced with newly adopted provisions in new §221.4, which is being published elsewhere in this issue of the *Texas Register*.

Summary of Comments Received. The Board did not receive any comments on the proposed repeal of §221.4.

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 repeal is adopted under the authority of the Occupations Code §301.151 and §301.152(a) - (c).

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 301.152 (a) defines "advanced practice registered nurse" as a registered nurse licensed by the Board to practice as an APRN on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

Section 301.152(b) provides that the Board shall adopt rules to: (1) license a registered nurse as an APRN; (2) establish any specialized education or training, including pharmacology, that an APRN must have to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054; a system for approving an APRN to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054 on the receipt of evidence of completing the specialized education and training requirement under Paragraph (A); and a system for issuing a prescription authorization number to an APRN approved under Paragraph (B); and (3) concurrently renew any license or approval granted to an APRN under this subsection and a license renewed by the APRN under Section 301.301.

Section 301.152(c) states that, at a minimum, the rules adopted under Subsection (b)(2) must: require completion of pharmacology and related pathophysiology education for initial approval; and (2) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under Section 301.303.

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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Jena Abel

Deputy General Counsel

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22 TAC §221.11

Introduction

The Texas Board of Nursing (Board) adopts the repeal of §221.11. The Board is adopting amendments to §§221.2 - 221.5, and §§221.7 - 221.10 and the repeal of §221.4 elsewhere in this issue of the *Texas Register*. No changes are being made to §221.1, §221.6, or §§221.12 - 221.17. The repeal is being adopted without changes to the proposed text published in the October 12, 2018, issue of the *Texas Register* (43 TexReg 6767).

Background

In January 2012, the Board issued a charge to the Advanced Practice Nursing Advisory Committee (Committee) to review Chapter 221 and make recommendations for changes. The Committee met from July 2012 to September 2013 to review and discuss proposed changes to Chapter 221. After its discussions, the Committee voted to recommend proposed changes to the Board for adoption. The Board considered the proposed changes, the Committee's recommendations, and Staff's recommendations at its April 2014 meeting. Following discussion and deliberation, the Board voted to approve the publication of the proposed changes in the *Texas Register*. The Board received several public comments on the proposal, which were considered by the Board at its July 2014 meeting. The Board, at that time, voted to withdraw the rule amendments for reconsideration at a later date.

The Committee reconvened on May 9, 2018, to again consider the Board's original 2012 charge regarding the review of Chapter 221. The proposed changes, which were discussed and approved by the Committee. The Board considered the proposed amendments, the Committee's recommendations, and Board Staff's recommendations at its regularly scheduled meeting on July 19-20, 2018, and voted to approve the publication of the proposed amendments and both repeals in the *Texas Register* for public comment. The Board did not receive any comments on the proposed repeal of §221.11.

Overview of the Adopted Repeal

The former language of §221.11 has been relocated to newly adopted §221.2(c) for better overall organization and readability of the rule. Since the language has been relocated, there is no longer a need for former §221.11.

Summary of Comments Received

The Board did not receive any comments on the proposed repeal of §221.11.

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 repeal is adopted under the authority of the Occupations Code §§301.151 and §301.152(a) - (c).

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 301.152 (a) defines "advanced practice registered nurse" as a registered nurse licensed by the Board to practice as an APRN on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

Section 301.152(b) provides that the Board shall adopt rules to: (1) license a registered nurse as an APRN; (2) establish any specialized education or training, including pharmacology, that an APRN must have to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054; a system for approving an APRN to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054 on the receipt of evidence of completing the specialized education and training requirement under Paragraph (A); and a system for issuing a prescription authorization number to an APRN approved under Paragraph (B); and (3) concurrently renew any license or approval granted to an APRN under this subsection and a license renewed by the APRN under Section 301.301.

Section 301.152(c) states that, at a minimum, the rules adopted under Subsection (b)(2) must: require completion of pharmacology and related pathophysiology education for initial approval; and (2) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under Section 301.303.

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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Jena Abel

Deputy General Counsel

Texas Board of Nursing

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PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board) adopts amendments to §§681.1 - 681.17, 681.31, 681.41 - 681.51, 681.71, 681.73, 681.81 - 681.83, 681.91, 681.92, 681.101 - 681.103, 681.111, 681.112, 681.114, 681.121, 681.123, 681.124, 681.126, 681.141, 681.143, 681.145, 681.146, 681.162, 681.164 - 681.172, 681.181, 681.182, 681.184, 681.201, and 681.251 - 681.253; new §§681.72, 681.93, 681.125, 681.142, 681.147 and 681.161; and the repeal of §§681.52, 681.72, 681.93, 681.125, 681.142, 681.144, and 681.161. The amendments to §§681.2, 681.14, 681.15, 681.81, 681.83, 681.91, 681.141 and 681.145; and new §§681.72, 681.93, 681.142 and 681.147 are adopted with changes to the proposed text as published in the October 12, 2018, issue of the *Texas Register*(43 TexReg 6769) and will be republished.

BACKGROUND AND JUSTIFICATION

Texas Government Code §2001.039 requires each state agency review and consider for re-adoption each rule adopted by the agency pursuant to the Texas Government Code Chapter 2001 (Administrative Procedure Act). Sections 681.1 - 681.17, 681.31, 681.41 - 681.52, 681.71 - 681.73, 681.81 - 681.83, 681.91 - 681.93, 681.101 - 681.103, 681.111 - 681.114, 681.121 - 681.126, 681.141 - 681.146, 681.161, 681.162, 681.164 - 681.172, 681.181, 681.182, 681.184, 681.201 - 681.204 and 681.251 - 681.253 have been reviewed and the board has determined the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of professional counselors are still needed; however, changes are needed as described in this preamble and are the result of the comprehensive rule review undertaken by the board and board staff.

The board is adopting rules with minor changes from the proposal published on October 12, 2018. The board is changing §681.2(18) concerning the definition of LPC Intern to clarify the definition. The first letters in §§681.14(9), (10), (11), (12), and (13) are being capitalized for consistency with the other subsections and grammar. Section 681.72(a) was revised to correct the misspelling of the word "either." Due to public comment, the board is not amending §681.83(d)(4) concerning academic course requirements. Section 681.91(a)(3) was amended to include the words "of this title" after "§681.72(a)(3) and (a)(4)" to clarify rule references. Changes are also being made to §681.93 concerning Supervisor Requirements. Section 681.93(a)(1)(D) is being amended to not include the words "and duration." Section 681.93(a)(1)(E) and (F) are deleted and the rest of the sub-

paragraphs are renumbered. Section 681.141(c) is amended to delete the words "of which 9 clock hours must be completed via live instruction." Section 681.141(c)(2) is amended to remove the word "complete." The requirement in Section 681.142(4) maintaining all continuing education records and documentation to be maintained for three years was deleted. The rest of the section is renumbered. Section 681.145(c) was revised by removing the words "which meets" to state "competence in professional counseling at an accredited school will be credited..." for clarification. Section 681.147(3)(D) was revised to include the phrase "of this title" following the rule references for §§681.91 - 681.93.

In general, each section was reviewed for re adoption in order to ensure appropriate subchapter, section, and paragraph organization; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; to eliminate unnecessary catch-titles; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

SECTION-BY-SECTION SUMMARY

This section-by-section summary considers only those sections which were substantially changed in language, meaning, or intent. A number of modifications are adopted for the chapter in order to meet the objectives of the agency review of rules as described in this preamble, such as improving draftsmanship and ensuring clarity.

Non-substantive changes were made to various sections of the chapter, including the addition of "Texas" to "Occupations Code," "Family Code," "Health and Safety Code," and other Texas statutes, for clarity and consistency to: §§681.11, 681.17, 681.45, 681.114, 681.162, 681.165, 681.169, 681.182, 681.251, and 681.252; the addition of clarifying language to sections entitled "General" to: §§681.71, 681.81, 681.121, and 681.141; the substitution of "Purpose" with clarifying language for "General" as appropriate to: §681.1 and §681.201; the standardization of the phrase "jurisprudence exam" to: §§681.72, 681.73, 681.92, 681.101, 681.112, 681.125, and 681.141; the consistent usage of the acronym "APA" for Administrative Procedure Act, as defined in §681.2(3), in: §§681.16, 681.164, 681.165, and 681.181; and the use of "must" or "will" instead of "shall" to indicate action is required or will take place.

The following changes are adopted concerning Subchapter A (relating to the Board).

Amendments to §681.2 clarify definitions for "Accredited school," "Counseling-related degree," "License," "Licensee," and "LPC Intern"; add definitions for the terms "Commission," "Consent for Services," "Consent Form," and "Jurisprudence Exam"; and remove definitions for "Department," "Distance Counseling," and "Site." As a result of the new definitions, the definitions are renumbered accordingly.

Amended §681.4(b) adds that the board or staff member opinions about ethical dilemmas or practice issues can never be substituted for appropriate professional consultation or legal advice.

Amended §681.6(a) allows the boards designee to sign off on official board meeting minutes.

Amended §681.6(c) allows official meeting minutes to be posted on the board's website.

Amended §681.10(a) clarifies who will be involved in the hiring of the executive director.

Amended §681.10(b) adds wording that the executive director may delegate responsibilities to other staff members as appropriate. As a result of the new subsection (b), the rule is renumbered accordingly.

Amended §681.13(c) clarifies all Americans with Disabilities Act accommodations must be made in writing with appropriate verification of disabilities and recommendations by the appropriate individual qualified to make such recommendations.

Amendments to §681.14 add fees for licensing including: (a)(2), a provisional license fee of \$50; (a)(3), a supervisor status application fee of \$100; (a)(5), a supervisor status renewal fee of \$100; (a)(8), a supervisor status inactive to active conversion fee of \$100; and (c), which adds that fees paid to the board are not refundable. The subsections and paragraphs are renumbered for the additions. Other non-substantive changes are made. There are no increases in fees in this section to licensees. All fees added in this section are already in board rules, but are being placed in one rule rather than appearing in different sections throughout the rules.

Amended §681.15(2) clarifies that the letter of denial of a license will be sent within 30 working days, and removes subparagraphs (A), (B), and (C) to delete unnecessary language.

Amended §681.16(c) changes that a petition must be submitted to the executive director.

Amended §681.16(d) allows the executive director's designee to determine if the petition contains necessary information.

Amended §681.16(f) specifies that petitions must be presented at the first full board meeting after receiving the petition.

The following changes are adopted concerning Subchapter C (relating to Code of Ethics).

Amendments to §681.41: (g) eliminate redundancy; (h) eliminate all forms of barter; (m) clarify that a licensee may not engage in a nontherapeutic relationship with a client if the relationship begins less than two years after the end of the counseling relationship and clarify that a licensee may not engage in sexual contact with a client if the contact begins less than five years after the end of the counseling relationship; (p) clarify precautions to protect a client from physical or emotional harm within a group or individual counseling; (r) clarify that records must be kept for a minimum of six years from the date of the last contact with the client; (cc) states that licensees must not submit falsified documents to the board; (dd) clarify that services must not be provided while the licensee is impaired; and make other non-substantive changes.

Amendments to §681.42 define allowable sexual contact by an LPC with a former client, LPC-Intern or student; (f) remove the subsection as it is an unnecessary rule and exists in statute; and remove current subparagraph (g)(1)(C) because it is unnecessary. As a result of the deletion of (f), the rules are renumbered accordingly. Amendments are also made to remove redundant references to definitions, and include other non-substantive changes.

Amendments to §681.45 clarify references to statutes, delete redundancies, and clarify that deferred adjudication must be reported to the board, and include other non-substantive changes.

Amendments to §681.46(d) add that a licensee must provide a written response to the board's request for information or other correspondence and that the board may consider a failure to re-

spond to the board grounds for disciplinary action. Amendments also include other non-substantive changes.

Amendments to §681.48 are non-substantive grammatical changes.

Amendments to §681.49(d) delete the requirement that an academic degree has to be reported by the American Association of Collegiate Registrars and Admissions Officers to be used in advertising. Amendments also include other non-substantive changes.

Amendments to §681.51 delete redundancies throughout the rule.

Section 681.52 is repealed and the subsections are moved to §681.91.

The following changes are adopted concerning Subchapter D (relating to Application Procedures).

Amendments to §681.71: (a) clarify that all supporting documentation and fees must be submitted to the board; (b) clarify the application is received after all fees are received by the board office; add and replace (c) specifying the requirements to obtain an LPC license from LPC intern status; add and replace (d) detailing staff communication for any deficiencies in the application and indicating the applicant must resolve deficiencies within one year of the notice from staff; add new subsection (e) that states an application with an unresolved deficiency is null and void after one year of the date of the deficiency notice and applicants may reapply by submitting a new application with all requirements for licensure; and add new subsection (f) requiring that applicants who previously held a Texas license reapply for licensure by demonstrating all requirements and paying all applicable fees.

Section 681.72 is repealed and replaced by new §681.72 regarding Required Application Materials. New §681.72 will allow for clarity in submitting required information in an application for licensure.

Amendments to §681.73 delete redundancies and include other non-substantive changes.

The following changes are adopted concerning Subchapter E (relating to Academic Requirements for Licensure).

Amendments to §681.81: clarify subsection (a) that the board will accept graduate degree from accredited schools that meet the requirements of §§681.82 and 681.83; (b) delete the requirement that academic course work will only be accepted from university accredited by the American Association of Collegiate Registrars and Admissions Officers and delete other redundancies; (d) clarify that applicants must provide course descriptions from an official catalog, bulletin, or syllabus to substantiate the course meets the requirements of §681.83; (e) and (f) clarify when coursework will be considered; delete subsection (h); and other non-substantive changes.

Amendments to §681.82 clarify the academic requirements required by an applicant.

Amendments to §681.83(a) clarify that an applicant who holds a graduate degree in counseling from an accredited school is presumed to have satisfied the academic course requirement. This section also adds new subparagraphs (A), (B), and (C) under subsection (b) paragraph (10).

The following changes are adopted concerning Subchapter F (relating to Experience Requirements for Licensure).

Amendments to §681.91: add new paragraph (a)(3), requiring the licensee to complete the requirements of §681.72; add new subsection (b), stating that an LPC intern must comply with all provisions of the LPC Statutes and board rules; clarify subsection (d), that an LPC intern may only practice under the supervision of a Licensed Professional Counselor Supervisor and may not own a private independent professional counseling practice; add new subsection (i), stating that the LPC Intern will continue supervision until obtaining an LPC license; add new subsection (j), clarifying an LPC Intern does not own client records, but that they are the property of the agency or organization; add new (k), allowing an LPC Intern to compensate, but not employ a supervisor for the time the supervisor spends in the supervision of the LPC Intern; add new (l), clarifying that an LPC Intern must not accept direct payment for services from a client; add new (m), stating that all billing documents for services provided by the LPC Intern must reflect that the LPC Intern is an Intern and is being supervised; and add new (n), stating the requirements that the LPC Intern's name must be followed by the supervisor's name on all advertisements, billings, and announcements and that the LPC Intern cannot hold themselves out as an independent practitioner.

Amendments to §681.92: add new paragraphs (a)(1) and (2) moved from §681.93(a) and (b) that indicate supervised experience gained in Texas must be under a board-approved supervisor while supervised experience gained in a jurisdiction other than Texas must be under a qualified supervisor; delete subsections (d), (e), and (f); add new subsection (f) allowing an LPC Intern to have up to two supervisors; and delete subsections (i), (j), (k), (l), (m), and (n).

Section 681.93 is repealed and replaced with new §681.93, detailing supervisor requirements. New §681.93 includes: subsection (a), which requires a supervisor to keep a written record of each supervisory session of the LPC Intern; new paragraph (a)(1) and subparagraphs (A), (B), (C), (D), (E) and (F), which require the supervisor to keep a written record to contain the items specified; new paragraph (a)(2), which requires the supervisor to provide a copy of all records to the LPC Intern upon request; new subsection (b), stating that the professional responsibility for counseling activities of the LPC Intern rests with the Intern's supervisor and the supervisor may also be subject to disciplinary action if the Intern is disciplined; new paragraphs (b)(1) and (2), which require the supervisor to review the provisions of the Act and board rules during supervision, and ensure the Intern is aware of, and adheres to, the Act and board rules; new subsection (c), and paragraphs (c)(1) and (2), requiring that the supervisor must avoid relationships that impair the supervisor's objective or professional judgment, the supervisor may not be related to the intern within the second degree of affinity or third degree of consanguinity, and the supervisor may not be an employee of the Intern; new subsection (d), which requires the supervisor to submit to the board accurate documentation of the Intern's supervised experience within 30 days of the end of the supervision or completion of the intern's required hours, whichever is first; new subsection (e), which requires the supervisor to develop and implement a plan for remediation of the Intern if the supervisor does not believe the Intern has the skills or competence to practice counseling; new subsections (f)(1) and (2), which require the supervisor to ensure the supervised counseling experience of the Intern was earned after the LPC Intern license was issued and in not less than 18 months of supervised counseling experience; new subsection (g), and paragraphs (g)(1), (2), and (3), which require a supervisor to inform an LPC Intern, re-

fund all supervisory fees to the Intern if the supervisor license has expired; new subsection (h), states that a supervisor who has their status revoked must inform the LPC Intern, refund all supervisory fees, and the hours accumulated after the date of revocation do not count as acceptable hours; and new subsection (i), which allows for disciplinary action if there is supervision of an Intern without being a board approved supervisor.

The following changes are adopted concerning Subchapter G (relating to Licensure Examinations).

Amended §681.101(a) and (c) add the National Clinical Mental Health Counselor Exam.

The following changes are adopted concerning Subchapter H (relating to Licensing).

Amendments to §681.111 include: (a), which removes the initial license expiration added in §681.121(a); (d) and (e), which include the phrase "all applicable fees"; and (f), which adds "school" in place of "college" or "university" as reported by the American Association of Collegiate Registrars and Admissions Offices.

Amendments to §681.112 include: (a)(3), which adds the National Clinical Mental Health Counselor Exam as a way to meet the testing requirement; add new paragraph (a)(4), requiring a supervisory agreement form; and other non-substantive changes.

Changes concerning Subchapter I (relating to Regular License Renewal; Inactive and Retirement Status) are adopted as follows.

The amendments to §681.121 includes the new initial license expiration. The license expiration date is the last day of the licensee's birth month. The initial expiration date is 12 months after the first month following the issuance of the license.

Section 681.124 discusses late renewal. Subsection (b) changes that a licensee who renews a license 91 days to no more than one year after the expiration of their license must pay the 2-year renewal fee plus the appropriate late fee. Subsection (c) is deleted and subsequent subsections are renumbered.

Section 681.125 is a repeal and new rule and discusses how a licensee can put their license on inactive status.

Amendments to §681.126 remove the language that, upon request, the board staff will stamp the license certificate as retired and return the retired certificate to the licensee.

The following changes are adopted concerning Subchapter J (relating to Continuing Education Requirements).

Amendments to §681.141 include provisions moved from §681.142(d) to subsection (c), such that a licensee must complete 24 clock-hours of continuing education; (c)(2), which allows the jurisprudence exam to count as one hour of continuing education in ethics; and (e), deleted, that requires the jurisprudence exam to be completed each renewal period.

Section 681.142 is repealed and replaced. New §681.142 simplifies the requirements for acceptable continuing education for the purposes of license renewal or satisfaction of disciplinary stipulations.

Section 681.144 is repealed to lower costs to stakeholders.

New §681.147 is adopted regarding 40-Clock-Hour Supervisor Training Course. New §681.147 includes: introductory paragraph which states the course must comply with §681.142 of

this title (relating to Types of Acceptable Continuing Education) and: paragraph (1) which states the course must be taught by a full LPC with supervisor status; paragraph (2) which states all related coursework and assignments must be completed over a time period not to exceed 90 days; and paragraph (3) which states the 40-clock-hour supervision training must include at least: paragraph (3)(A) which states three (3) clock-hours for defining and conceptualizing supervision and models of supervision; paragraph (3)(B) which states three (3) clock-hours for supervisory relationship and counselor development; paragraph (3)(C) which states twelve (12) clock-hours for supervision methods and techniques, covering roles (teacher, counselor, and consultant), focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (racial, ethnic, and gender issues), and evaluation methods; paragraph (3)(D) which states twelve (12) clock-hours covering roles for supervision and standards of practice; Subchapter B (relating to Authorized Counseling Methods and Practices); Subchapter C (relating to Code of Ethics); §681.91 of this title (relating to LPC Intern License); §681.92 of this title (relating to Experience Requirements (Internship)); §681.93 of this title (relating to Supervisor Requirements); other codes of ethics; and legal and professional issues; and paragraph (3)(E) which states three (3) clock-hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

The following are adopted changes concerning Subchapter K (relating to Complaints and Violations).

Section 681.161 is repealed and replaced to clarify and simplify the complaints process. New subsection (a) discusses the eligibility of a complaint and specifies it must be on a form prescribed by the board. New subsection (b) discusses allegations not involving violations of §681.42 of this title must be filed within 5 years of the date of termination of professional services or within 5 years of a minor client's 18th birthday, whichever is later. New subsection (c) discusses the board sending acknowledgement of receipt to the complainant. New subsection (d) discusses review by team whose members are designated in board policy to determine if the board has jurisdiction over the complaint and to determine the nature of the allegations. New paragraphs (d)(1), (2), and (3), including subparagraphs (d)(2)(A) and (B), discuss the handling of jurisdictional complaints by board staff. New subsection (e) discusses notice of an investigation in writing to the licensee writing. New subsection (f) states the commission will draft a report to include a recommendation as to whether the investigation has produced sufficient evidence of a violation. New subsection (g) and new paragraphs (g)(1) and (2) discuss the review of a complaint by the review team and counsel for the board and to determine the sufficiency of the evidence. New subsection (h) states that at each board meeting, staff will provide the board with a list of complaints dismissed for lack of jurisdiction or lack of violation since the previous meeting of the board.

Section 681.162(b) is removed as redundant of new complaint process outlined in §681.161(g)(1). The remaining subsections are renumbered accordingly.

COMMENTS

During the comment period, the board received comments regarding the proposed rules from individuals and one association, the Texas Counseling Association (TCA). A summary of comments relating to the rules and the board's responses follows.

General Comment: One commenter supported replacing the word "shall" with the word "must" throughout the proposed rules.

Response: The board appreciates the supportive comment.

§681.2.

Comment: Multiple commenters supported the proposed definition changes.

Response: The board appreciates the supportive comments.

Comment: Commenters questioned the definition of "consent form" and what "restrictions placed on the license by the board means."

Response: Any restriction that is placed on the licensee by board order will be a restriction placed on the license by the board.

Comment: One commenter suggested the new definition of "consent form" be revised to "a document signed by the legally authorized person to ensure the client is aware of the requirements set out in §681.41(e) of this title."

Response: The board disagrees. Section 681.2(9) and §681.41(e) are different and are to be used together. The board declines to make the suggested change.

Comment: Commenters supported telecommunication across state lines.

Response: If any party to a counseling session is in any other state than Texas, the other state and Texas must approve of that service being rendered. The board emphasizes that it does not have jurisdiction to allow interstate practices.

Comment: Commenters requested a definition of month.

Response: The term month is given the common definition of what a calendar month is. The term month is to allow discretion on the part of licensees. The board declines to make the suggested change.

Comment: The Texas Counseling Association and other commenters asked the board to provide a definition of "timely manner."

Response: Anytime a response is requested of a stakeholder by the board or board staff, the document should contain a response date listed on the document. The board declines to make the suggested change.

Comment: Commenters encourage the board to reconsider the removal of the definition of "distance counseling."

Response: The board disagrees. The board is trying to open counseling to other forms than just in-person counseling. The board is not going to limit distance counseling in the State of Texas. The board declines to make the suggested change.

Comment: One commenter wants the board to consider "dance/movement therapy" as a counseling related field.

Response: The board does not have legal authority to make the change. This change would require a statutory change. The board declines to make the suggested change.

Comment: One commenter recommended to add a sentence to §681.5 that emphasizes board or staff member opinions about ethical dilemmas.

Response: This is outside of the scope of this rule project. The board declines to make the suggested change.

Comment: Commenters suggested to add language specific to a board member's recusal of case review when there is history of a prior professional or personal relationship with the licensee.

Response: The board disagrees. This issue will be dictated by board policy, not by board rule. The board declines to make the suggested change.

§681.6.

Comment: One commenter supported the posting of meeting minutes to the board's website.

Response: The board appreciates the supportive comment.

§681.14.

Comment: One commenter suggested that the supervisor fee be lowered as they are more liable with an Intern working under them in order that the supervisor may put the money toward increasing the defense coverage amount on their malpractice/liability insurance policy.

Response: The board disagrees. The current fee is set at a reasonable rate. The board declines to make the suggested change.

Comment: One commenter asked the board to double check the renewal license being one year or two when compared to §681.121(a).

Response: The rule sections are accurate.

§681.41.

Comment: Commenters disagreed with the board requiring licensees to maintain client records for six years rather than five years.

Response: The board made this change to align with the Health Insurance Accountability and Portability Act.

Comment: Commenters agreed with the six-year proposal to maintain client records.

Response: The board appreciates the supportive comments.

Comment: One commenter requested clarification as to when the new process on retaining client records would begin.

Response: The process will begin upon the effective date of the rule.

Comment: One commenter requested clarification if client records for a minor should be kept the six years or until the client is 18 years old.

Response: Client records must be maintained in accordance with board rules, Texas, and federal law.

Comment: One commenter requested the board to consider a definition for "nontherapeutic relationship."

Response: A definition of non-therapeutic relationship currently exists in board rule §681.41(m)(1).

Comment: One commenter noted that it is unreasonable for a licensee to have access to a past client's records for six years, while the licensee is able to make sexual advances to that client after five years.

Response: The board made the change to record retention in the proposed text to align with the Health Insurance Accountability and Portability Act.

Comment: One commenter noted that the board removed specification to providing technological counseling and requests the board to provide specifics related technological counseling.

Response: The board in removing the specifics allows the licensee to use their best judgment and care when providing technological counseling. A licensee must still follow all standards when providing care through technological means. The board declines to make the suggested change.

Comment: Commenters requested definitions for, "should have known" and "impaired."

Response: The board disagrees. These definitions are unnecessary. The board declines to make the suggested change.

Comment: A commenter requested guidance on ethical keeping of electronic records.

Response: Client records must be maintained in accordance with board rules, Texas, and federal law.

Comment: One commenter suggested the LPC board become more aligned with the Psychology board by allowing licensees to self-assess to determine if licensees can remain objective and do no harm to clients in a dual non-sexual relationship and not wait the 2 years after the end of a counseling relationship.

Response: The board disagrees. The waiting period ensures a sufficient amount of time has passed to protect the client.

Comment: A commenter noted that "informed consent" should be changed to "consent form" for consistency.

Response: The board disagrees. Informed consent is a standard term used in the community. The board declines to make the suggested change.

§681.42.

Comment: One commenter expressed concern regarding the federal mandates for the Health Insurance Accountability and Portability Act and the banking industry compliance.

Response: If required to do so, a licensee should follow all federal mandates.

Comment: One commenter requested the board to consider the need for counselors to begin to incorporate the compliance regulations in their business.

Response: If required to do so, a licensee should incorporate any compliance regulations in their business.

Comment: The Texas Counseling Association and other commenters supported the changes being made to the time limitations and expansion of the rules for filing a complaint against a license holder for sexual misconduct and the expansion of rules to protect LPC-Interns and students.

Response: The board appreciates the supportive comment.

Comment: Commenters noted adding LPC-Interns and students into the mandatory reporting guidelines is problematic as it creates an undue burden for licensees and applicants to report against one another without regard to accuracy.

Response: In order to effectively protect the citizens of Texas, licensees, including LPC-Interns and students, need to report certain violations of the Act or rules to the board.

§681.45.

Comment: Commenters supported the requirement to report a deferred adjudication to the board within 30 days.

Response: The board appreciates the supportive comment.

Comment: Commenters suggested that after two years of no new incidents and good behavior, the board would then remove all noted incidents from the licensee's file.

Response: The board disagrees. Reporting the incidents keeps the board informed if there are future incidents and identifies any trends.

Comment: One commenter disagreed that deferred adjudication should be reported.

Response: The board is allowed by Occupations Code Chapter 53 to consider convictions for deferred adjudication.

Comment: One commenter noted in the court of law, someone is innocent until proven guilty, and reporting an arrest without a conviction is as a person admitting to guilt without a chance to prove their innocence.

Response: The board disagrees. Reporting the incidents keeps the board informed if there are future incidents and identify any issues that will require the board to intervene in order to protect the public.

§681.46.

Comment: Commenters expressed concern that requiring a licensee to report alleged violations of the Act or rules will cause counselors to be isolated and not seek peer to peer guidance to self-correct.

Response: In order to effectively protect the citizens of Texas and to effectively regulate the profession, licensees need to report certain violations of the Act or rules to the board.

Comment: One commenter stated that §681.46(f) and (g) concerning licensee violations have never been implemented so they should not exist.

Response: The board disagrees. The provisions are needed if violations of these subsections are committed. The board declines to make the suggested change.

§681.71.

Comment: The Texas Counseling Association and other commenters supported an applicant having one full year to comply with all board requirements when submitting an application.

Response: The board appreciates the supportive comments.

Comment: One commenter disagreed with the proposed change of allowing one year to comply with board requirements when submitting an application noting this seems to be a board issue due to agency backlog and that it seems easier to maintain the 45-day requirement and require the applicant to start over by reapplying.

Response: An applicant is now given one year to resolve any deficiencies in an application after board staff has reviewed the application. This is to the benefit of the applicant to not have to reapply.

§681.72.

Comment: The Texas Counseling Association and other commenters supported adding the National Clinical Mental Health Exam as an acceptable exam for licensure.

Response: The board appreciates the supportive comments.

Comment: One commenter requested to change the time frame of acceptable exams to 10 years.

Response: The board disagrees. Five years for the acceptable exam is an appropriate time frame and ensures that the potential licensee is current with methodologies and the practice of counseling. The board declines to make the suggested change.

§681.81.

Comment: The Texas Counseling Association and other commenters supported the repeal that restricts the acceptability for degrees earned more than 10 years prior to application for licensure.

Response: The board appreciates the supportive comments.

Comment: One commenter recommends to keep the 10-year restriction on educational degrees in the rules because an individual does not stay up-to-date with the profession.

Response: The board disagrees. A potential licensee will still need to pass a recognized examination in order to be licensed. The board declines to make the suggested change.

§681.82.

Comment: The Texas Counseling Association and other commenters supported the amendment to reduce the time required to be licensed in another jurisdiction from 5 years to 2 years.

Response: The board appreciates the supportive comments.

§681.83.

Comment: Commenters disagreed that there should be a course in Psychopharmacology rather than Psychopathology.

Response: The board agrees. The proposed change is not being made and the original rule text was retained in subsection (d)(4).

§681.91.

Comment: Commenters supported the removal of subsection (e) in the proposal to not have more than five sites for LPC-Interns.

Response: The board appreciates the supportive comments.

§681.92.

Comment: Commenters supported repealing the requirement that supervision can only be 10% webcam.

Response: The board appreciates the supportive comments.

Comment: Commenters supported the removal of 10% cap on supervision hours that can be earned via technology.

Response: The board appreciates the supportive comments.

Comment: One commenter expressed concern that supervision should only be allowed in Texas.

Response: The board disagrees. An intern who completes an internship in another jurisdiction will still be required to provide documentation acceptable and approved by the board regarding the supervisor's qualifications.

Commenter: One commenter recommended the board to consider their decision that no direct hours beyond the required practicum hours can be counted toward their total 3,000 hours.

Response: The board disagrees. The 3,000 hours required to be completed must be done under the supervision of a board ap-

proved supervisor in order to count toward the hour requirement. The board declines to make any changes to the proposed rule text.

§681.93.

Comment: Commenters expressed concern with the per day penalty amount for violations for board approved supervisors.

Response: The per day penalty amount is found in Occupations Code §503.502.

Comment: One commenter supported the clarification that all upgraded application documents must be submitted within 30 days of the end of supervision or the completion of the required hours, whichever comes first.

Response: The board appreciates the supportive comment.

Comment: The Texas Counseling Association and other commenters requested that the board define what "accurate documentation" means.

Response: The board disagrees and declines to make the suggested change. The term used is meant to provide flexibility in what documentation can be provided, is intended to make it easier on stake holders to complete the documentation and removes unnecessary forms.

Comment: One commenter noted that an Intern's licensure and site verifications should occur online on the board's website.

Response: Intern licensure and verifications are available on the board's website at: <https://www.dshs.texas.gov/counselor/>.

Comment: One commenter noted electronic notes and billing software does not allow the ability to mix client/Intern files. Also noted, each Intern should have their own supervision notes for each session stating whether the session was group or not.

Response: This comment is outside the scope of this rule.

Comment: Commenters supported that a supervisor must provide a copy of all records to a licensed intern upon request.

Response: The board appreciates the supportive comments.

Comment: Commenters disagreed with the current board rule requiring a licensee to hold full licensure in Texas for 60 months before being eligible to hold supervisor status.

Response: The requirement to be licensed in Texas for five years prior to being a supervisor is based on historical data. The board received fewer complaints for supervisors who had been licensed for approximately five years.

Comment: One commenter supported the board in removing the required 50% of face-to-face supervision instruction.

Response: The board appreciates the supportive comment.

Comment: One commenter requested the board to provide specific information as to the type of disciplinary action that would potentially be placed against a supervisor for bad behavior by an intern.

Response: A board supervisor may be disciplined for the action of the intern or any other potential violations the supervisor committed by not properly supervising an intern.

Comment: One commenter supported the clarification on intern and supervisor responsibilities.

Response: The board appreciates the supportive comment.

§681.101.

Comment: Commenters supported adding National Clinical Mental Health Exam as an alternate exam for licensure.

Response: The board appreciates the supportive comment.

§681.125.

Comment: One commenter appreciated more options for individuals who need to declare inactive status of their license.

Response: The board appreciates the supportive comment.

Comment: One commenter agreed that continuing education should be required for an individual seeking to return to full licensure.

Response: The board appreciates the supportive comment.

§681.141.

Comment: Commenters suggested the board include four hours of continuing education specific to cultural competence and multicultural counseling.

Response: The board will review the research on this issue and consider this for future board rules.

Comment: Commenters disagreed with the board's proposal to remove the three-hour continuing education credit for attending the board's Application & Supervision Issues Committees meetings.

Response: Providing three hours of education credit for attending committee meetings created an unfair environment due to other licensees throughout the state being unable to attend the meetings due to travel restrictions.

Comment: Commenter disagreed with removing the Texas Jurisprudence Exam as part of the renewal process as it does not provide assurance licensees are at least familiar with some board rules.

Response: The Jurisprudence Exam is still required. This requirement was moved to a different section of the §681.101.

Comment: One commenter requested a definition of "live instruction."

Response: The board removed the term "live instruction" from the rule in §681.141(c). The board declines to make the suggested change.

Comment: One commenter suggested rewording of §681.141(c)(2) for clarifying purposes.

Response: The board agrees and has changed the language removing the word "complete."

Comment: Commenters support the proposal for continuing education to be gained online rather than face-to-face.

Response: The board appreciates the supportive comments.

§681.142.

Comment: Commenters disagreed with the proposal of the board no longer pre-approving continuing education providers and stated this change appears to shift the responsibility to ensure it is an adequate course to the licensee and no longer the provider.

Response: There is currently no oversight for the pre-approved providers and licensees will be given the flexibility in order to determine which continuing education will best suit their needs.

Continuing education providers will still be required to comply with the board rule for the education courses they provide.

Comment: One commenter supported only maintaining continuing education documents for three years when reviewing for records retention.

Response: A licensee will no longer be required to maintain continuing education documentation as paragraph (4) was removed.

Comment: One commenter inquired if anyone can teach the supervision training course.

Response: The course must be taught by a full LPC with supervisor status.

Comment: One commenter supported the stipulation of the continuing education requirements for providers.

Response: The board appreciates the supportive comment.

§681.143.

Comment: One commenter expressed concern of the public's ability to identify quality continuing education providers.

Response: There is currently no oversight for the pre-approved providers and licensees will be given the flexibility in order to determine which continuing education will best suit their needs. Continuing education providers will still be required to comply with the board rule for the education courses they provide.

Comment: The Texas Counseling Association and other commenters recommended modifications to the board's proposal to no longer pre-approve providers by following current language used by the Psychology board regarding the use of approved providers.

Response: The board declines to make the suggested change. Continuing education providers will still be required to comply with the board rule for the education courses they provide.

Comment: Commenters supported the removal that no more than four clock hours of the twenty-four may be obtained by case supervision, management, and consultation.

Response: The board appreciates the supportive comments.

§681.147.

Comment: One commenter appreciated the stipulations of the 40-hour supervision course and believes it provides clarity.

Response: The board appreciates the supportive comment.

Comment: One commenter supports the new §681.147.

Response: The board appreciates the supportive comment.

§681.161.

Comment: The Texas Counseling Association and other commenters noted concerns with the opportunity for the licensee to respond or defend themselves on the alleged rule violations prior to the notice of violation being sent.

Response: The licensee will have an opportunity to respond during the investigation.

Comment: The Texas Counseling Association expressed concern that there may be a delay in notifying the licensee of specifics related to their pending complaint.

Response: The new complaint process is designed to speed up the process and become more efficient.

Comment: One commenter agreed with the board's new complaint process as it benefits the citizens of Texas as well as the licensee to have required timeframes for resolving citizen complaints.

Response: The board appreciates the supportive comments.

Comment: Commenters requested an amendment to request the initial notice of potential rule violations include the specifics of each complaint to best prepare for an investigation.

Response: The licensee will receive notice of potential violations through a notice of violation. The board declines to make the suggested change.

Comment: One commenter supported the new complaint process as it would greatly shorten the complaint process and creates a process to triage the complaints.

Response: The board appreciates the supportive comment.

Comment: One commenter supported the board's penalty matrix.

Response: The board appreciates the supportive comment.

Comment: One commenter requested the penalty matrix be available for licensee and public review.

Response: The penalty matrix is a public document and will be posted on the board's website at: <https://www.dshs.texas.gov/counselor/>.

Comment: One commenter expressed concern that the board did not appear to address the Sunset recommendations to remove client confidentiality from a public forum.

Response: The board disagrees. The new complaint process will ensure client confidentiality and the new process will no longer be held in a public forum to protect the client confidentiality.

Comment: Commenters requested the complainant be provided the same opportunity as the licensee to directly address the decision makers as well as be apprised of all steps during the process, including the informal conference, the investigation report, ability to present additional evidence, make statements, and receive notice of the disposition just as the licensee does.

Response: The complainant, if known, will be informed of when a complaint is received from them. The complainant may be contacted during an investigation phase to provide more information or clarify information. The complainant may be invited to an informal conference and will receive final disposition of the case.

Comment: Commenters shared their concern that during the investigation, informal conference, and hearing process the complainant or injured party are not protected.

Response: The board disagrees. The new complaint process will ensure client confidentiality and the new process will no longer be held in a public forum to protect the client confidentiality.

Comment: One commenter noted the process to file a complaint should be more specific and clear to include what type of information will be disclosed to the licensee, how the process works, and what to expect during the entire process and requests to be part of the entire process. Also, this individual requested to have someone available to provide advice to the injured party during the lengthy complaint process. This individual noted the

new complaint process is not fair and is lacking transparency and clarity.

Response: Board staff follow public information confidentiality provisions when releasing any document during or after an investigation. Complainants may obtain legal representation regarding their complaint. The new complaint process provides transparency by use of the penalty matrix.

Comment: One commenter noted the board did not address the need for an informal hearing prior to the formal hearing.

Response: The licensee will still be provided an opportunity for informal hearing prior to a formal hearing with the State Office of Administrative Hearings.

Comment: One commenter noted a licensee should not be required to report a notice of violation on their insurance application until the full process is resolved.

Response: This comment is outside the scope of this rule.

Comment: One commenter expressed concern that the prolonged investigation process allows licensees who are professionally and/or ethically impaired to continue practicing un-checked during the process which often takes an extended time to complete. Also, this individual noted that too many licensees do not take the board rules seriously enough.

Response: The board will not usurp due process of law.

§681.165.

Comment: One commenter questioned why the board does not typically execute their rule related to suspending a licensee without prior notice to the licensee or a prior hearing.

Response: The board will weigh statutory factors and due process considerations in the case of a potential emergency suspension.

§681.171.

Comment: One commenter noted that the supervision penalty is causing many licensees to not pursue or remove themselves from being a board approved supervisor.

Response: The penalty is statutory and found in Occupations Code §503.502.

§681.172.

Comment: One commenter noted few licensees are assigned penalties as with due process in settlement conferences or State Office of Administrative Hearings often provide the licensee with a plea down. The lengthy due process also allows the licensee to remain practicing.

Response: The board will not usurp due process of law.

SUBCHAPTER A. THE BOARD

22 TAC §§681.1 - 681.17

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

§681.2. *Definitions.*

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

(1) Accredited school--An institution of higher education accredited by a regionally accrediting agency recognized by the Texas Higher Education Coordinating Board.

(2) Act--The Licensed Professional Counselor Act, Texas Occupations Code, Chapter 503.

(3) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(4) Art therapy--A human service profession in which clients, facilitated by the art therapist, use art media, the creative process, and the resulting artwork to explore their feelings, reconcile emotional conflicts, foster self-awareness, manage behavior, develop social skills, improve reality orientation, reduce anxiety and increase self-esteem.

(5) Board--The Texas State Board of Examiners of Professional Counselors.

(6) Client(s)--A person(s) who requests and receives counseling services from a licensee or who has engaged in a therapeutic relationship with a licensee.

(7) Commission--Health and Human Services Commission.

(8) Consent for services--Process for receiving permission from the legally authorized person who agrees to services.

(9) Consent Form--A document signed by the legally authorized person to ensure the client is aware of fees and arrangements for payment; counseling purposes, goals, and techniques; restrictions placed on the license by the board; limits on confidentiality; intent of the licensee to use another individual to provide counseling treatment intervention to the client; supervision of the licensee by another licensed health care professional including the name, address, contact information, and qualifications of the supervisor; and the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter.

(10) Counseling-related field--A mental health discipline using human development, psychotherapeutic, and mental health principles including, but not limited to, clinical or counseling psychology, psychiatry, social work, marriage and family therapy, and counseling and guidance. Non-counseling related fields include, but are not limited to, sociology, education, administration, dance therapy and theology.

(11) Direct client contact--Time spent counseling clients.

(12) Health care professional--Any person licensed, certified, or registered by the state in a health related profession.

(13) Indirect hours--Time spent in management, administration or other aspects of counseling service ancillary to direct client contact.

(14) Jurisprudence exam--The Texas State Board of Examiners of Licensed Professional Counselors Jurisprudence exam.

(15) License--An LPC license, LPC license with art therapy specialty designation, provisional license, or LPC Intern license issued by the board.

(16) Licensee---A person who holds an LPC license, LPC license with art therapy specialty designation, provisional license, or LPC Intern license.

(17) LPC--Licensed Professional Counselor. A person holding an LPC license as a professional counselor with authority to practice in independent practice.

(18) LPC Intern--Licensed Professional Counselor Intern. A person who holds an LPC Intern license to practice counseling only under a board-approved supervisor and not as an independent practitioner.

(19) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, 26 U.S.C. §501(c)(3) and other individuals participating with them in pastoral counseling if:

(A) the counseling activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of the legally recognized denomination, church, sect, religious organization or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations, §1.6033-2(g)(i) (2012);

(B) the individual providing the service remains accountable to the established authority of that denomination, church, sect, religious organization or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a professional counselor.

(20) Supervisor--An LPC approved by the board as meeting the requirements set out in §681.93 of this title (relating to Supervisor Requirements) to supervise an LPC Intern.

§681.14. Fees.

(a) The schedule of fees includes the following:

(1) Application, LPC Intern, and LPC license fee--\$190;

(2) Provisional license fee--\$50;

(3) Supervisor status application fee--\$100;

(4) LPC renewal fee--\$100;

(5) Supervisor status renewal fee--\$100;

(6) LPC late renewal fee:

(A) 1-90 days after license expiration--\$125; and

(B) 91-365 days after license expiration--\$150.

(7) LPC active to inactive status conversion fee--\$50;

(8) Supervisor status active to inactive status conversion fee--\$100;

(9) License certificate or renewal card duplication or replacement fee--\$10;

(10) Returned check fee--\$25;

(11) Art therapy specialty designation application fee--\$30;

(12) Criminal history evaluation letter fee--\$50; and

(13) License verification fee--\$10.

(b) Remittances submitted to the board in payment of a required fee must be in the form of a personal check, cashier's check, money order, or online payment.

(c) Fees paid to the board are not refundable.

(d) For all applications and renewal applications, the commission is authorized to collect subscription and convenience fees in amounts approved by the Texas Department of Information Resources to recover costs associated with application and renewal application processing through the state electronic Internet portal.

(e) For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

§681.15. Processing Procedures.

Time periods. The board will comply with the following procedures in processing applications for a license and renewal of a regular license:

(1) The following periods of time apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing, is a temporary license, or a notice is given that the application is deficient and additional specific information is required. The time periods are as follows:

- (A) issuance of temporary license - 20 working days; or
- (B) letter of application deficiency - 20 working days.

(2) The letter of denial of a license will be sent within 30 working days from the receipt of the last item necessary to complete the application.

(3) The period of time from the receipt of the application for renewal of an LPC license until the renewal card is issued or written notice is given that the application is deficient and additional specific information is required is 20 working days. The LPC license renewal may be issued in lieu of the notice of acceptance. The time from the receipt of the last item necessary to complete the application for renewal until issuance of the renewed license or notification of denial of renewal is 20 working days.

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SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES

22 TAC §681.31

STATUTORY AUTHORITY

The amendment is authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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SUBCHAPTER C. CODE OF ETHICS

22 TAC §§681.41 - 681.51

STATUTORY AUTHORITY

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22 TAC §681.52

STATUTORY AUTHORITY

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SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §§681.71 - 681.73

STATUTORY AUTHORITY

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§681.72. *Required Application Materials.*

(a) To apply for LPC Intern, the applicant must submit:

- (1) the board's application form;
- (2) all applicable fees;
- (3) official examination results from the National Board of Certified Counselors verifying a passing score on the National Counselor Exam (NCE) or National Clinical Mental Health Counselor Exam (NCMHCE) issued no more than five (5) years before the date the application was received;
- (4) completion certificate for the jurisprudence exam dated no more than two years before the date the application is submitted;
- (5) an official graduate transcript(s) sent either:
 - (A) directly to the board from the school(s) either by mail or e-transcript; or
 - (B) attached to the application in a sealed school envelope;
- (6) a practicum/graduate intern documentation form; and
- (7) a supervisory agreement form.
- (8) The holder of a current license in good standing issued by another jurisdiction equivalent to the Texas LPC Intern license must submit official verification of his or her license, including official verification of any supervised experience recognized by the issuing jurisdiction. If supervised experience cannot be verified by the issuing jurisdiction, the board may consider a supervised experience documentation form with verification of the supervisor's credentials.

(b) To apply for LPC as the holder of a current Texas LPC Intern license, the applicant must submit:

- (1) the board's application form;
- (2) all applicable fees, unless paid in full when the current LPC Intern license was issued;
- (3) completion certificate for the jurisprudence exam dated no more than two years before the date the application for LPC was received;
- (4) a supervised experience documentation form; and

(5) other information or forms as requested by the board.

(c) To apply for LPC as the holder of a current license equivalent to a Texas LPC license issued by another jurisdiction, the applicant's license must be in good standing and must submit:

(1) all of the items listed in subsection (a)(1)-(6) of this section;

(2) official verification of the license, including official verification of any supervised experience recognized by the issuing jurisdiction; and

(3) other information or forms as requested by the board.

(4) The five-year expiration of the NCE or NCMHCE score does not apply to an applicant who has held a license issued by a United States jurisdiction in good standing for at least two (2) years before the date the application for LPC was received.

(d) To apply for supervisor status, an LPC must:

(1) have held the LPC license in good standing for at least 60 months;

(2) submit an application and all applicable fees; and

(3) submit a completion certificate for an acceptable supervisor training. An acceptable supervisor training is:

(A) a doctoral level course in the supervision of professional counseling or mental health services which was taken for credit at an accredited school and documented on an official transcript; the qualifying doctoral level course may have been completed no more than five (5) years before the date the application for supervisor status was received; or

(B) a 40-clock-hour supervision course as set forth in §681.147 of this title (relating to 40-Clock-Hour Supervisor Training Course); the qualifying 40-clock-hour supervision course may have been completed no more than two (2) years before the date the application for supervisor status was received.

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22 TAC §681.72

STATUTORY AUTHORITY

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SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

22 TAC §§681.81 - 681.83

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

§681.81. General Academic Requirements.

(a) The board will accept as meeting academic requirements graduate degrees from accredited schools that meet the requirements of §681.82 of this title (relating to Academic Requirements) and §681.83 of this title (relating to Academic Course Content).

(b) Degrees and course work received at foreign universities will be acceptable only if such course work would be counted as transfer credit by an accredited school. The applicant must provide the board with documents and evidence to establish his or her formal education is equivalent to at least a master's degree granted by an accredited school. Documentation must include:

(1) an original or certified copy of a diploma or other certificate of graduation;

(2) a transcript or comparable document of all course work completed; and

(3) a certified translation of all documents submitted in a language other than English.

(c) If degrees or course work cannot be documented because the foreign university refuses to issue a transcript or other evidence of the degrees or course work, the board may consider, on a case-by-case basis, accepting degrees or course work based on other evidence presented by the foreign graduate applicant.

(d) Applicants must provide upon request a course description from an official school catalog or bulletin or a course syllabus to substantiate the relevance of the course to the academic requirements of §681.83 of this title.

(e) The board will not consider undergraduate level courses as meeting any academic requirements for licensure unless the applicant's official transcript clearly shows the course was awarded graduate credit by the school.

(f) The board will consider courses for which an applicant's official transcript indicates a passing grade or credit was earned.

(g) In evaluating transcripts, the board will consider a quarter hour of academic credit as two-thirds of a semester hour.

§681.83. Academic Course Content.

(a) An applicant who holds a graduate degree in counseling from an accredited school is presumed to have satisfied the academic course content requirements described in this section.

(b) An applicant who holds a graduate degree in a counseling-related field must complete at least one course in each of the following areas:

(1) normal human growth and development - the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through adulthood;

(2) abnormal human behavior - the principles of understanding dysfunction in human behavior or social disorganization;

(3) appraisal or assessment techniques - the principles, concepts, and procedures of systematic appraisal or assessment of an individual's attitudes, aptitudes, achievements, interests, and personal characteristics, which may include the use of both non-testing approaches and test instruments;

(4) counseling theories - the major theories of professional counseling;

(5) counseling methods or techniques - the methods or techniques used to provide counseling treatment intervention including:

(A) counseling individuals; and

(B) the theory and types of groups, including dynamics and the methods of practice with groups;

(6) research - the methods of research which may include the study of statistics or a thesis project;

(7) life style and career development - the theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes;

(8) social, cultural, and family issues - the studies of change, ethnic groups, gender studies, family systems, urban and rural societies, population patterns, cultural patterns, and differing life styles;

(9) professional orientation - the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling treatment intervention; and

(10) practicum (internship) - supervised practicum experience primarily counseling in nature which includes:

(A) At least 300 clock-hours, of which at least 100 hours must be direct client counseling.

(B) Academic credit or other acknowledgment of the practicum/internship must appear on the applicant's official graduate transcript.

(C) No practicum course intended primarily for practice in the administration and grading of appraisal or assessment instruments will count toward the 300 clock-hour requirement.

(c) The remaining courses needed to meet the 48/60 graduate semester hour requirement must be counseling-related course work in areas directly supporting the development of an applicant's professional

counseling skills and must be courses related primarily to professional counseling.

(d) As of August 1, 2017, the following courses to meet the 60 semester hour requirement must include:

(1) addictions counseling; to include, but not limited to, gambling, sexual, eating, alcohol, or drug;

(2) an additional course in counselor ethics; to include records management, an overview of business/family law and professional practice, and the study of current board rules in this chapter;

(3) couples, marriage, or family counseling; and

(4) a course in psychopathology to include such content as criteria of psychiatric diagnosis, use of the current Diagnostic and Statistical Manual of Mental Disorders and the theories of psychopathology. The course should also include the basic knowledge of types of psychopharmacological medications.

(e) Passing the National Counselor Exam or National Clinical Mental Health Counselor Exam does not guarantee Texas state licensure requirements have been satisfied.

(f) An applicant may appeal to the board but does not have the right to a formal hearing before the State Office of Administrative Hearings if his or her application for licensure is denied based on the applicant's failure to meet academic requirements.

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SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§681.91 - 681.93

STATUTORY AUTHORITY

The amendments and new rule are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

§681.91. *LPC Intern License.*

(a) The board may issue an LPC Intern license to an applicant who has:

- (1) filed all application forms and paid all applicable fees;
- (2) met all of the academic requirements for licensure;

(3) completed the required examinations with the requisite score as described in §681.72(a)(3) and (a)(4) of this title (relating to Required Application Materials);

(4) entered into a supervisory agreement with a Licensed Professional Counselor Supervisor (LPC-S); and

(5) not completed the supervised experience described in §681.92 of this title (relating to Experience Requirements (Internship)).

(b) An LPC Intern must comply with all provisions of the Act and board rules in this chapter.

(c) To practice counseling in Texas, a person must obtain an LPC Intern license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting will not count toward the supervised experience requirements.

(d) An LPC Intern may practice counseling only as part of his or her internship and only under the supervision of a Licensed Professional Counselor Supervisor (LPC-S). The LPC Intern may not own an independent professional counseling practice.

(e) An LPC Intern may have no more than two (2) board-approved LPC supervisors at any given time.

(f) An LPC Intern must maintain their LPC Intern license during his or her supervised experience.

(g) An LPC Intern license will expire 60 months from the date of issuance.

(h) An LPC Intern who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure.

(i) An LPC Intern must continue to be supervised after completion of the 3,000 hours of supervised experience and until the LPC Intern receives his or her LPC license. Supervision is complete upon the LPC Intern receiving the LPC license.

(j) An LPC Intern does not own client records; they are the property of the agency or organization.

(k) An LPC Intern must not employ a supervisor but may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(l) An LPC Intern must not accept direct payment for services from a client.

(m) All billing documents for services provided by an LPC Intern must reflect the LPC Intern holds an LPC Intern license and is under supervision.

(n) The LPC Intern must not represent himself or herself as an independent practitioner. The LPC Intern's name must be followed by the name of the supervisor in the same type size and font on all advertisements, billings, and announcements, including but not limited to websites and intake documents.

§681.93. *Supervisor Requirements.*

(a) A supervisor must keep a written record of each supervisory session in the file for the LPC Intern.

(1) The supervisory written record must contain:

(A) a signed and dated copy of the board's supervisory agreement form for each of the LPC Intern's supervisors;

(B) a copy of the LPC Intern's wall certificate noting the dates of issuance and expiration;

- (C) fees and record of payment;
- (D) the date of each supervisory session;
- (E) a record of an LPC Intern's leave of one month or more, documenting the supervisor's approval and signed by both the LPC Intern and the supervisor; and

(F) a record of any concerns the supervisor discussed with the LPC Intern, including a written remediation plan as prescribed in subsection (e) of this section.

(2) The supervisor must provide a copy of all records to the LPC Intern upon request.

(b) The full professional responsibility for the counseling activities of the LPC Intern rests with the LPC Intern's board approved supervisor(s). If the LPC Intern receives disciplinary action by the board, the supervisor may also be subject to disciplinary action.

(1) Supervisors must review all provisions of the Act and board rules in this chapter during supervision.

(2) The supervisor must ensure the LPC Intern is aware of and adheres to all provisions of the Act and board rules in this chapter.

(c) The supervisor must avoid any relationship that impairs the supervisor's objective, professional judgment.

(1) The supervisor may not be related to the LPC Intern within the second degree of affinity or within the third degree of consanguinity.

(2) The supervisor may not be an employee of his or her LPC Intern.

(d) The supervisor must submit to the board accurate documentation of the LPC Intern's supervised experience within 30 days of the end of supervision or the completion of the LPC Intern's required hours, whichever comes first.

(e) If a supervisor determines the LPC Intern may not have the counseling skills or competence to practice professional counseling under an LPC license, the supervisor will develop and implement a written plan for remediation of the LPC Intern, which must be reviewed and signed by the LPC Intern and maintained as part of the LPC Intern's file.

(f) The supervisor must ensure the supervised counseling experience of the LPC Intern were earned:

- (1) after the LPC Intern license was issued; and
- (2) in not less than 18 months of supervised counseling experience.

(g) A supervisor whose license has expired is no longer an approved supervisor and:

(1) must immediately inform all LPC Interns under his or her supervision and assist the LPC Interns in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the expiration of the supervisor status.

(3) Hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

(h) Upon execution of a board order for probated suspension, suspension, or revocation of the LPC license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked:

(1) must immediately inform all LPC Interns under his or her supervision and assist the LPC Interns in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the date the supervisor status is revoked; and

(3) hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

(i) Supervision of an LPC Intern without having board approved supervisor status is grounds for disciplinary action.

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22 TAC §681.93

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SUBCHAPTER G. LICENSURE EXAMINATIONS

22 TAC §§681.101 - 681.103

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SUBCHAPTER H. LICENSING

22 TAC §§681.111, 681.112, 681.114

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SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

22 TAC §§681.121, 681.123 - 681.126

STATUTORY AUTHORITY

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22 TAC §681.125

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SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§681.141 - 681.143, 681.145 - 681.147

STATUTORY AUTHORITY

The amendments and new rule are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

§681.141. General Continuing Education Requirements.

(a) The purpose of this subchapter is to establish the continuing education requirements for the renewal of an LPC license. These requirements are intended to maintain and improve the quality of professional counseling services provided to the public and maintain licensee knowledge of current research, techniques, and practice; and provide resources which will improve skill and competence in professional counseling.

(b) Continuing education requirements for renewal must be fulfilled during a 24-month period beginning on the first day of a licensee's renewal year and ending on the last day of the licensee's renewal year.

(c) A licensee must complete 24 clock-hours of continuing education acceptable to the board during each 24-month period. A clock-hour is 60 minutes of attendance and participation in an acceptable continuing education experience. A licensee must complete:

(1) at least four hours of continuing education in ethics, two of which must be directly related to Texas LPC ethics, each renewal period; and

(2) successfully the jurisprudence exam each renewal period. Completion of the jurisprudence examination will count as one hour of continuing education in Texas LPC ethics.

(d) A licensee holding the supervisor status must complete 6 hours of continuing education in supervision every 2 years.

§681.142. Acceptable Continuing Education.

To be acceptable for the purposes of license renewal or satisfaction of disciplinary stipulations, the education must be received from a continuing education provider that:

(1) ensures the education provided is related to the practice of professional counseling;

(2) ensures the individual(s) presenting the information have the necessary experience and knowledge in the topic(s) presented;

(3) verifies attendance of participants and provides participants with a letter or certificate of attendance displaying the licensee's name, topic covered, date course was taken, and hours of credit earned; and

(4) provides participants a mechanism for evaluation of each continuing education activity.

§681.145. Determination of Clock-hour Credits.

(a) Programs which meet the criteria of §681.142 of this title (relating to Acceptable Continuing Education) will be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education activity.

(b) Teaching in programs not part of the licensee's employment which meet the board's criteria as set out in §681.142 of this title will be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hours credit for preparation for each hour taught. No more than 9 hours of the 24 clock-hour continuing education requirement can be credited under this option. Credit may be granted for the same presentation only once during a two-year period.

(c) Completion of academic work with a passing grade in subject areas supporting the development of skills and competence in professional counseling at an accredited school will be credited on the basis of 15 clock-hours of credit for each semester hour or 10 clock-hours of credit for each quarter hour completed.

§681.147. 40-Clock-Hour Supervisor Training Course.

The 40-clock-hour supervision training must comply with §681.142 of this title (relating to Acceptable Continuing Education) and:

(1) the course must be taught by a full LPC with supervisor status;

(2) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(3) the 40-clock-hour supervision training must include at least:

(A) three (3) clock-hours for defining and conceptualizing supervision and models of supervision;

(B) three (3) clock-hours for supervisory relationship and counselor development;

(C) twelve (12) clock-hours for supervision methods and techniques, covering roles (teacher, counselor, and consultant), focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (racial, ethnic, and gender issues), and evaluation methods;

(D) twelve (12) clock-hours covering roles for supervision and standards of practice; Subchapter B (relating to Authorized Counseling Methods and Practices); Subchapter C (relating to Code of Ethics); §681.91 of this title (relating to LPC Intern License); §681.92 of this title (relating to Experience Requirements (Internship)); §681.93 of this title (relating to Supervisor Requirements); other codes of ethics; and legal and professional issues; and

(E) three (3) clock-hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

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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Steven Christopherson

Chair

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22 TAC §681.142, §681.144

STATUTORY AUTHORITY

The repeals are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

22 TAC §681.161

STATUTORY AUTHORITY

The repeal is authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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22 TAC §§681.161, 681.162, 681.164 - 681.172

STATUTORY AUTHORITY

The amendments and new rule are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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SUBCHAPTER L. FORMAL HEARINGS

22 TAC §§681.181, 681.182, 681.184

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the

board to set fees reasonable and necessary to cover the costs of administering this chapter.

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SUBCHAPTER M. SCHEDULE OF SANCTIONS

22 TAC §681.201

STATUTORY AUTHORITY

The amendment is authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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SUBCHAPTER N. PARENTING COORDINATION AND FACILITATION AND CHILD CUSTODY AND ADOPTION EVALUATIONS

22 TAC §§681.251 - 681.253

STATUTORY AUTHORITY

The amendments are authorized by the Texas Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of its duties, as well as under the Texas Occupations Code, §503.202, which authorizes the board to set fees reasonable and necessary to cover the costs of administering this chapter.

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

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

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

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (DSHS), adopts amendments to §265.11, concerning Definitions; §265.12 concerning Directors, Supervisors, and Staff; §265.15, concerning Medical and Nursing Care; §265.23, concerning Application and Denial of a New License; Non-transferable; and §265.24, concerning Application and Denial of a Renewal License. The amendments to §265.11, §265.12 and §265.15 are adopted with changes to the proposed text as published in the December 7, 2018, issue of the *Texas Register* (43 TexReg 7866). Therefore, these rules will be republished. The amendments to §265.23 and §265.24 are adopted without changes; therefore, these rules will not be republished.

BACKGROUND AND JUSTIFICATION

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

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

The amendment to §265.15 requires licensees to notify the youth camp regulatory authority, DSHS-Policy Standards Quality Assurance (PSQA) section, of any incidents or suspected incidents of abuse or neglect of a minor at a youth camp. The rule revisions further clarify that notification of the PSQA section is separate and distinct from the abuse and neglect reporting requirements established in Chapter 261 of the Family Code.

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

COMMENTS

The thirty-day comment period ended January 7, 2019.

During the thirty-day comment period, DSHS received comments by email, U.S. mail, and at a scheduled public hearing held on January 2, 2019, regarding the proposed rules from eleven commenters, including representatives of the Camping Association for Mutual Progress (C.A.M.P.), Highland Lakes Baptist Encampment, Camp Longhorn, and Camp Olympia.

Comment: Several commenters stated that DSHS should keep the original language detailing a Public Water System at §265.11(16).

Response: DSHS agrees and revises the rule as suggested.

Comment: Several commenters suggested the word "specialized" should be added to the term "youth camp activity" as defined at §265.11(26) to more clearly describe and define the term.

Response: DSHS agrees and revises the rule as suggested. Section 265.11(26), "Youth camp activity", as well as references to "youth camp activity" and "youth camp activities" in §265.11(27)(H), §265.12(b), and §265.12(c) are updated to read "youth camp specialized activity" and "youth camp specialized activities."

Comment: Several commenters suggested that the term "department" as it appears in §265.15(d)(1)(A)(iii) and §265.15(d)(1)(B) should be clarified to read as "Department of State Health Services" to alleviate confusion for the reader.

Response: DSHS agrees and revises the rule as suggested.

Comment: Several commenters expressed concern about the reporting options for incidents of abuse and neglect at a youth camp listed at §265.15(d)(1)(A). The commenters stated the reporting options are confusing and suggested that DSHS eliminate the reporting options from the rule.

Response: DSHS disagrees and declines to revise the rule in response to these comments. The reporting options listed at §265.15(d)(1)(A) are established by Chapter 261 of the Texas Family Code; therefore, the reporting options cannot be eliminated. Section 265.15(d)(1)(B) clarifies that incidents of abuse and neglect are to be reported to DSHS, and that this requirement is separate and distinct from the abuse and neglect reporting requirements established by Chapter 261 of the Texas Family Code.

In addition, minor editorial changes were made to §265.12(b) and §265.15(c).

STATUTORY AUTHORITY

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

§265.11. *Definitions.*

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

(1) Act--Texas Youth Camp Safety and Health Act, Health and Safety Code, Chapter 141.

(2) Adult--A person at least 18 years of age or older.

(3) Camper--A minor child, under 18 years of age, who is attending a youth camp on either a day or boarding basis.

(4) Challenge course--Activity designed for educational purposes or team building, which may offer a variety of challenges, including zip lines, high and low rope courses, rappelling, and climbing walls.

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

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

(7) Department--Department of State Health Services.

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

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

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

(11) Pellet gun--Any device designed, made, or adapted to expel a projectile through a barrel by using compressed air or carbon dioxide. This definition includes air guns, air rifles, BB guns, and paint-ball guns.

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

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

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

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

(16) Public water system--A public water system, as defined in 30 Texas Administrative Code (TAC) §290.38(71) is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water (30 TAC §290.38(23)). Such a system shall have at least 15 service connections or serve at

least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

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

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

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

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

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

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

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

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

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

(23) Waterfront--A natural or artificial body of water that includes a lake, ocean, bay, pond, river, swimming pool, or spa, which is the site of any water activity.

(24) Waterfront activity--A recreational or instructional activity, occurring in, on, or near a waterfront. Waterfront activity includes swimming, boating, water skiing, scuba diving, rafting, tubing, synchronized swimming or sailing.

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

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

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

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

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

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

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

(A) provides supervision, instruction, and recreation;

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

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

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

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

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

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

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

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

§265.12. *Directors, Supervisors, and Staff.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Supervised contact with campers.

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

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

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

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

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

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

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

§265.15. *Medical and Nursing Care.*

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

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

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

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

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

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

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

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

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

did not occur at the youth camp, then that person shall immediately make a report, in accordance with Family Code, §261.103.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 February 5, 2019.

TRD-201900359

Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: February 25, 2019
Proposal publication date: December 7, 2018
For further information, please call: (512) 231-5753

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER D. OTHER RULES

37 TAC §152.71

The Texas Board of Criminal Justice adopts amendments to §152.71, concerning Acceptance of Gifts Related to Buildings for Religious and Secular Programs, without changes to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8568).

The adopted amendments clarify the responsibilities associated with donating buildings to the TDCJ.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.001, 492.013, 501.009.

Cross Reference to Statutes: None.

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 February 8, 2019.

TRD-201900405
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Effective date: February 28, 2019
Proposal publication date: December 28, 2018
For further information, please call: (936) 437-6700

◆ ◆ ◆
CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.36

The Texas Board of Criminal Justice adopts amendments to §163.36, concerning Supervision of Offenders with Mental Impairment, without changes to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8569).

The adopted amendments are necessary to clarify the definition of an offender with a mental impairment and make grammatical and formatting updates.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 509.003; Texas Health and Safety Code §614.013.

Cross Reference to Statutes: None.

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 February 8, 2019.

TRD-201900406

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Effective date: February 28, 2019

Proposal publication date: December 28, 2019

For further information, please call: (936) 437-6700



CHAPTER 195. PAROLE

37 TAC §195.51

The Texas Board of Criminal Justice adopts the repeal of §195.51 concerning Sex Offender Supervision, as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8570).

The adopted repeal eliminates an unnecessary rule. No statute requires the board to promulgate a rule regarding the Parole Division supervision of sex offenders.

No comments were received regarding the proposed repeal.

The repeals are adopted under Texas Government Code §492.013, §508.112.

Cross Reference to Statutes: None.

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 February 8, 2019.

TRD-201900407

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Effective date: March 24, 2019

Proposal publication date: December 28, 2018

For further information, please call: (936) 437-6700



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.1, §439.19

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 439, Examinations for Certification, Subchapter A, Examinations For On-Site Delivery Training, concerning §439.1, Requirements--General, and §439.19, Number of Test Questions. The amendments are adopted without changes to the proposed text as published in the November 23, 2018, *Texas Register*, (43 TexReg 7657) and will not be republished.

The adoption removes language addressing the plan examiner component of Fire Inspector examination. Plan Examiner would become a stand-alone exam and separate certification.

No comments were received from the public regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties, and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for fire protection personnel.

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 February 8, 2019.

TRD-201900376

Tim Rutland

Executive Director

Texas Commission on Fire Protection

Effective date: February 28, 2019

Proposal publication date: November 23, 2018

For further information, please call: (512) 936-3812



CHAPTER 459. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR CERTIFICATION

37 TAC §§459.1, 459.3, 459.5

The Texas Commission on Fire Protection (the commission) adopts the repeal of Chapter 459, Minimum Standards For Fire and Life Safety Educator Certification, concerning §459.1, Fire and Life Safety Educator I Certification, §459.3, Minimum Standards for Fire and Life Safety Educator I Certification, and §459.5, Examination Requirement. The repeal is adopted without changes to the proposed text as published in the November 23, 2018, *Texas Register* (43 TexReg 7660) and will not be republished.

The repeal is adopted to establish new Chapter 459, titled Fire and Life Safety Educator that creates a Subchapter A, Minimum Standards for Fire and Life Safety Educator I and Subchapter

B, Minimum Standards for Fire and Life Safety Educator II. Subchapter A will consist primarily of current rule language and Subchapter B will contain all new language. New Chapter 459 is simultaneously being adopted in this issue of the *Texas Register*.

No comments were received from the public regarding the adoption of this repeal.

The repeal is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties, and §419.032, which allows the commission to appoint fire protection personnel.

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 February 8, 2019.

TRD-201900377
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2019
Proposal publication date: November 23, 2018
For further information, please call: (512) 936-3812



CHAPTER 459. FIRE AND LIFE SAFETY EDUCATOR

The Texas Commission on Fire Protection (the commission) adopts new Chapter 459, Fire And Life Safety Educator, Subchapter A, Minimum Standards For Fire and Life Safety Educator I concerning §459.1, Fire and Life Safety Educator I Certification, §459.3, Minimum Standards for Fire and Life Safety Educator I Certification, and §459.5, Examination Requirement; and Subchapter B, Minimum Standards For Fire and Life Safety Educator II, concerning §459.201, Fire and Life Safety Educator II Certification, §459.203, Minimum Standards for Fire and Life Safety Educator II Certification, and §459.205, Examination Requirement. The new Chapter is adopted without changes to the proposed text as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7661) and will not be republished.

The adoption establishes a new chapter title, Fire and Life Safety Educator that creates a Subchapter A, Minimum Standards for Fire and Life Safety Educator I and Subchapter B, Minimum Standards for Fire and Life Safety Educator II.

No comments were received from the public regarding the adoption of the new Chapter.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR I

37 TAC §§459.1, 459.3, 459.5

The new rules are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

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 February 8, 2019.

TRD-201900378
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2019
Proposal publication date: November 23, 2018
For further information, please call: (512) 936-3812



SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR II

37 TAC §§459.201, 459.203, 459.205

The new rules are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel.

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 February 8, 2019.

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Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: February 28, 2019
Proposal publication date: November 23, 2018
For further information, please call: (512) 936-3812



PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.217

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Texas Administrative Code §651.217, concerning Ineligibility for License Based on Criminal Conviction, to correct a citation in the rule. The amendment is adopted with non-substantive changes to the rule text as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 69) and will be republished.

The amendment corrects a mistake in a cross-reference where §651.217(c)(2) cites §651.217(d) - (g), instead of §651.216(d) - (g). It is adopted in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a.

Summary of Comments. No comments were received regarding the amendment to this section.

Statutory Authority. The amendment is adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendment affects 37 TAC Chapter 651, §651.203.

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 February 6, 2019.

TRD-201900363

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: February 26, 2019

Proposal publication date: January 4, 2019

For further information, please call: (512) 936-0661



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 adopts amendments to §§450.1(1), 450.3(b) - (d) and (h), and 450.5(a) of Title 40, Part 15, Chapter 450 of the Texas Administrative Code concerning Veterans County Service Officers Certificate of Training, with changes to the proposed text as published in the November 30, 2018, issue of the *Texas Register* (43 TexReg 7753). Section 450.1 was adopted without changes and will not be republished. Section 450.3 and §450.5 were adopted with changes to clarify the "fiscal" year rather than "calendar" year and will be republished.

The adopted amendments are minor revisions to §§450.1(1), 450.3(b) - (d) and (h), and 450.5(a) to align the timeframe of Veterans 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).

No comments were received regarding the proposed rule amendments.

The amended rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.038, which authorizes the commission to establish rules governing the training and certification for Veterans County Service Officers and Assistant Veterans County Service Officers.

§450.3. General Provisions.

(a) All newly appointed officers shall be provided a copy of information concerning initial training and maintenance of certification of training when information is received indicating an appointment has been made by a county commissioners court.

(b) Completion of initial training shall constitute necessary training to issue a certificate of training for each fiscal 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 fiscal year.

(d) The commission may pay for attendance to one commission conducted training event per fiscal 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) All initial training and continuing training requirements are set and approved by the commission Claims Representation and Counseling Director or designee. Initial training and continuing training requirements shall be resubmitted and reevaluated biennially at a minimum.

(f) Credit hours may be awarded for completing third party training if the training and testing is approved by the United States Department of Veterans Affairs (VA).

(g) Acceptance of credit hours earned through third party training.

(1) The commission must receive from the organization providing the training the following information to allow for the awarding of credit hours to officers:

- (A) Name of organization providing the training;
- (B) Documentation from the VA;
- (C) Course title and description;
- (D) Course outline; and
- (E) All course materials.

(2) Third party training and testing must be evaluated by the commission Claims Representation and Counseling Director or designee using the requirements set and approved in accordance with subsection (f) of this section. The number of credit hours to be awarded for third party training is determined by review of the third-party training curriculum by the commission Claims Representation and Counseling Director, and the commission Training and Event Manager. Review and awarding of credit hours will be conducted utilizing the curriculum review matrix.

(3) To receive credit hours for third party training, the training must be approved by the commission in accordance with paragraph (1) of this subsection prior to the officer's attendance. Officers must

submit a request to the commission containing the following information:

- (A) Training provider;
- (B) Title of course;
- (C) Certificate or verification of completion; and
- (D) Date of completion.

(h) After completion of all initial training requirements, a certificate of training shall be issued each October 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) Inquiries concerning the certification process shall be directed to and answered by the commission Claims Representation and Counseling Director. Disputes shall be reviewed and a decision rendered by the commission Claims Representation and Counseling Director or designee. Disputes which remain unresolved shall be referred to the executive director of the commission or the executive director's designee(s). The decision of the executive director or the executive director's designee(s) shall be final.

§450.5. Documentation of Attendance.

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

(b) The commission shall inform each county commissioners court of its respective officers' compliance with Texas Government Code §434.038.

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 February 8, 2019.

TRD-201900400
Madeleine Connor
General Counsel
Texas Veterans Commission
Effective date: February 28, 2019
Proposal publication date: November 30, 2018
For further information, please call: (512) 463-3605



CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION

40 TAC §451.3

The Texas Veterans Commission adopts the amendment to 40 TAC §451.3, relating to General Provisions, without changes to the proposed text as published in the November 30, 2018, issue of the *Texas Register* (43 TexReg 7755) and will not be republished.

The adopted amendment is to align the timeframe of Veterans 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).

No comments were received regarding the proposed rule amendment.

The amended rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.038, which authorizes the commission to establish rules governing the training and certification for Veterans County Service Officers and Assistant Veterans County Service Officers.

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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Madeleine Connor
General Counsel
Texas Veterans Commission
Effective date: February 28, 2019
Proposal publication date: November 30, 2018
For further information, please call: (512) 463-3605



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) adopts amendments and new subchapter to the following sections of Chapter 800, relating to General Administration, without changes, as published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 8050). Section 800.2 is adopted with non-substantive changes and will be republished.

Subchapter A. General Provisions, §800.2 and §800.3

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Chapter 800 is amended to align §800.3 with Texas Government Code §2161.002, as required by statute. Section 800.3 relates to TWC's provisions for helping historically underutilized businesses (HUBs) bid for competitive contracts.

Pursuant to Government Code §2161.003, all state agencies are required to adopt the State Comptroller rules described in Texas Government Code §2161.002, relating to increasing agency contract awards to HUBs. Effective September 1, 2016, administration of vocational rehabilitation services was transferred from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC. To ensure continuity and avoid disruption of services to customers upon transfer, the administrative rules shared by all DARS programs were duplicated into Chapter 850 of this title, relating to Vocational Rehabilitation Services Administrative Rules and Procedures. Chapter 850 is being amended in a separate rulemaking to delete unneeded or outdated references and to move certain provisions to more appropriate locations. The amendment includes moving the definition of "HUB" to §800.2 and moving the language being repealed in §850.23, Adoption of Rules, to §800.3.

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:

§800.2. Definitions

Section 800.2 is amended to add the definition of "Historically Underutilized Business" as it applies to §800.3. In addition, all citations to the superseded Workforce Investment Act (WIA) are updated to reflect the Workforce Innovation and Opportunity Act (WIOA).

§800.3. Historically Underutilized Businesses

Section 800.3 is amended to remove an explanation of TWC's provisions for helping HUBs bid for competitive contracts. The section is replaced with wording previously in effect at Section 850.23, incorporating TWC's formal adoption of the rules of the Texas Comptroller of Public Accounts, consistent with Texas Government Code §2161.002 relating to HUBs.

Subchapter C. Savings Incentive Program for State Agencies, §800.100 - §800.101

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Chapter 800 is being amended to add rules on implementing the Savings Incentive Program for State Agencies, as required by amendments made to Texas Government Code §2108.103(f) under Senate Bill (SB) 132 enacted by the 85th Texas Legislature, Regular Session (2017).

Effective September 1, 2017, SB 132 changed the Savings Incentive Program in Texas Government Code, Chapter 2108, to remove the 1 percent cap on funds allowed to be retained by an agency and to allow the agency to retain one-half of the savings, with the other half being returned to general revenue.

SB 132 also:

--allows a state agency to spend the savings on bonuses, divided equally among eligible employees who directly contributed to the agency's savings or who worked in the agency department responsible for the savings;

--establishes a tiered bonus structure that is based on the percentage of the agency's savings;

--prohibits a state agency from giving the bonuses to agency employees in upper management positions;

--requires an agency to pay off its general obligation bonds before issuing bonuses; and

--limits an agency's spending to an activity or expense that does not create new services or expand services or will not require ongoing funding at a later date.

Currently, TWC has no appropriated undedicated general revenue and, therefore, has no current savings to retain. However, consistent with revisions to Chapter 2108 of the Texas Government Code, this section will govern any potential future savings realized from appropriated undedicated general revenue.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER C. SAVINGS INCENTIVE PROGRAM FOR STATE AGENCIES

TWC adopts Subchapter C, Savings Incentive Program for State Agencies, as follows:

§800.100. Definitions

New §800.100 is added to define terms that apply to the Savings Incentive Program for State Agencies.

§800.101. Procedure

New §800.101 is added to explain TWC's procedure for implementing the Savings Incentive Program for State Agencies. As required under Texas Government Code, Chapter 2108, the procedure includes verification by the comptroller of the amount of savings, retention and usage of the savings by TWC, and the awarding of bonuses by TWC.

No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2, §800.3

The rules are adopted under Texas Government Code §2161.003 and 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 Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adult Education and Literacy (AEL)--Academic instruction and education services below the postsecondary level that increase an individual's ability to:

(A) read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent;

(B) participate in job training and retraining programs or transition to postsecondary education and training; and

(C) obtain and retain employment.

(2) Agency--The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(3) Allocation--The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.

(4) Board--A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Innovation and Opportunity Act (WIOA) §107 (29 USC §3122), including those functions required of a youth standing committee, as provided for under WIOA §107(i). The definition of Board shall apply to all uses of the term in the rules contained in this part, or unless otherwise

defined, relating to the Texas Workforce Commission. Boards are subrecipients as defined in OMB Circular A-133.

(5) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIOA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(6) Choices--The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under Temporary Assistance for Needy Families (TANF) (42 USC 601 et. seq.) to assist individuals who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.

(7) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(8) Formal Measures--Workforce development services performance measures adopted by the governor and developed and recommended through the Texas Workforce Investment Council (TWIC).

(9) Employment Service--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (Wagner-Peyser Act of 1933 (Title 29 USC, Chapter 4B) as amended by WIOA (PL 113-128)).

(10) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include an individual delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(11) Historically Underutilized Business (HUB)--A business entity as defined in 34 TAC §20.282 that is certified by the State of Texas, has not exceeded the standards for size established by 34 TAC §20.294, and has established Texas as its principal place of business.

(12) Local Workforce Development Area (workforce area)--Workforce areas designated by the governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under WIOA §106 and §189(i)(1) (29 USC §3121 and §3249).

(13) One-Stop Service Delivery Network--A one-stop--based network under which entities responsible for administering separate workforce investment, educational, and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods--also known as Texas Workforce Solutions.

(14) Performance Measure--An expected performance outcome or result.

(15) Performance Target--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome

Formal Measures. Achievement between 95 and 105 percent of the established target is considered meeting the target.

(16) Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: October 1 - September 30;

(B) Choices: October 1 - September 30;

(C) Employment Service: October 1 - September 30;

(D) Supplemental Nutrition Assistance Program Employment and Training: October 1 - September 30;

(E) Workforce Innovation and Opportunity Act (WIOA) Vocational Rehabilitation: October 1 - September 30;

(F) Trade Act services: October 1 - September 30;

(G) WIOA Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;

(H) WIOA Alternative Funding for Statewide Activities: October 1 - September 30;

(I) WIOA Alternative Funding for One-Stop Enhancements: October 1 - September 30; and

(J) WIOA, Adult Education and Literacy: July 1 - June 30.

(17) Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)--A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regulations (7 USC §2011), and Chapter 813 of this title relating to Supplemental Nutrition Assistance Program Employment and Training.

(18) TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (7 USC §2011 et seq.) and the TANF statutes and regulations (42 USC §601 et seq.), 45 Code of Federal Regulations (CFR) Parts 260 - 265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code, Chapter 34.

(19) Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 CFR Part 617) providing services to dislocated workers eligible for Trade benefits through Workforce Solutions Offices.

(20) TWIC--Texas Workforce Investment Council, appointed by the governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board, as provided for under WIOA §101(e) (29 USC §3111(e)). In addition, pursuant to WIOA §193(a)(5) (29 USC §3253(a)(5)), TWIC maintains the duties, responsibilities, powers, and limitations as provided in Texas Government Code §§2308.101 - 2308.105.

(21) WIOA--Workforce Innovation and Opportunity Act--(PL 113 - 128, 29 USC §3101 et seq.). References to WIOA include references to WIOA formula-allocated funds unless specifically stated otherwise.

(22) WIOA Formula-Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of services: WIOA adult, dislocated worker, and youth (excluding the secretary's and governor's reserve funds and rapid response funds).

(23) Workforce Solutions Offices Partner--An entity that carries out a workforce investment, educational, or other human resources program or activity, and that participates in the operation of the One-Stop Service Delivery Network in a workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

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 February 5, 2019.

TRD-201900350

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: February 25, 2019

Proposal publication date: December 14, 2018

For further information, please call: (512) 680-1655



SUBCHAPTER C. SAVINGS INCENTIVE PROGRAM FOR STATE AGENCIES

40 TAC §800.100, §800.101

The rules are adopted under Texas Government Code §2108.103(f), which requires state agencies to adopt implementing rules. In addition, Texas Labor Code §301.0015(a)(6) and §302.002(d), 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 Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 February 5, 2019.

TRD-201900351

Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: February 25, 2019

Proposal publication date: December 14, 2018

For further information, please call: (512) 680-1655



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 129, Student Attendance, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 129 are organized under the following subchapters: Subchapter A, Student Attendance Allowed; and Subchapter B, Student Attendance Accounting.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 129, Subchapters A and B, continue to exist.

The public comment period on the review begins February 22, 2019, and ends March 29, 2019. A form for submitting public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/2017-2021_State_Board_of_Education_Rules_Currently_Under_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/2017-2021_State_Board_of_Education_Rules_Currently_Under_Review/). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The SBOE will take registered oral and written comments on the review at the appropriate committee meeting in April 2019 in accordance with the SBOE board operating policies and procedures.

TRD-201900472

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 13, 2019



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 129, Student Attendance, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 129 are organized under the following subchapters: Subchapter AA, Commissioner's Rules; and Subchapter BB, Commissioner's Rules Concerning Truancy Prevention Measures and Sanctions.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 129, Subchapters AA and BB, continue to exist.

The public comment period on the review of 19 TAC Chapter 129, Subchapters AA and BB, begins February 22, 2019, and ends March 25, 2019. A form for submitting public com-

ments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/2017-2021_Commissioner_Rules_Currently_Under_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/2017-2021_Commissioner_Rules_Currently_Under_Review/). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TRD-201900470

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 13, 2019



The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 157, Hearings and Appeals, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 157 are organized under the following subchapters: Subchapter A, General Provisions for Hearings Before the State Board of Education; and Subchapter D, Independent Hearing Examiners.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 157, Subchapters A and D, continue to exist.

The public comment period on the review begins February 22, 2019, and ends March 29, 2019. A form for submitting public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/2017-2021_State_Board_of_Education_Rules_Currently_Under_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/2017-2021_State_Board_of_Education_Rules_Currently_Under_Review/). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The SBOE will take registered oral and written comments on the review at the appropriate committee meeting in April 2019 in accordance with the SBOE board operating policies and procedures.

TRD-201900473

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 13, 2019



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 157, Hearings and Appeals, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC

Chapter 157 are organized under the following subchapters: Subchapter AA, General Provisions for Hearings Before the Commissioner of Education; Subchapter BB, Specific Appeals to the Commissioner; Subchapter CC, Hearings of Appeals Arising Under Federal Law and Regulations; Subchapter DD, Hearings Conducted by Independent Hearing Examiners; and Subchapter EE, Informal Review, Formal Review, and Review by State Office of Administrative Hearings.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 157, Subchapters AA-EE, continue to exist.

The public comment period on the review of 19 TAC Chapter 157, Subchapters AA-EE, begins February 22, 2019, and ends March 25, 2019. A form for submitting public comments on the proposed rule review is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/2017-2021_Commissioner_Rules_Currently_Under_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/2017-2021_Commissioner_Rules_Currently_Under_Review/). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TRD-201900469
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: February 13, 2019



Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intent to review Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, in its entirety, under Texas Government Code §2001.039, *Agency Review of Existing Rules*. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part II, or through the commission's website at www.puc.state.tx.us. Project Number 48979 is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each section of Chapter 26 continue to exist. If it is determined during this review that any section of Chapter 26 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intent to review Chapter 26 has no effect on the sections as they currently exist.

Comments on the review of Chapter 26 (16 copies) shall be submitted to the filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, 31 days after publication. Reply comments shall be submitted 45 days after publication. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapters and to clearly designate which section is being commented upon. All comments should refer to Project Number 48979.

The rule chapter subject to this review is proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated

§14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act, §14.002; Texas Government Code §2001.039.

TRD-201900374
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: February 7, 2019



Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (Commission) readopts the rules in 13 Texas Administrative Code Chapter 1, Library Development, as a result of reviewing the rules under Texas Government Code §2001.039. Notice of the review was published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 8155).

The Commission reviewed the following rules:

SUBCHAPTER A. LIBRARY SERVICES AND TECHNOLOGY ACT STATE PLAN

- §1.21. State Plan for the Library Services and Technology Act in Texas.
- §1.22. Circulation.

SUBCHAPTER B. STANDARDS FOR ACCREDITATION OF A MAJOR RESOURCE SYSTEM OF LIBRARIES IN THE TEXAS LIBRARY SYSTEM

- §1.41. Geographical Area of System.
- §1.42. Boundaries of System.
- §1.43. Long-Range Plan of System Services (Biennial Budget).
- §1.44. Annual Program and Budget for System Services.
- §1.45. Reestablishment of System Services.
- §1.46. Interlibrary Loan and Reference and Referral Services.
- §1.47. Consulting and Continuing Education Services.
- §1.48. Criteria for Major Resource Centers.
- §1.53. Direct Grants-in-Aid: Prohibition.
- §1.54. Equalization Grants: Prohibition.
- §1.61. System Bylaws.
- §1.63. Proposal Requirements: Fiscal and Administrative Responsibility.
- §1.64. Cash Reserves: Regional Library Systems.
- §1.65. Directors and Officers of Regional Library Systems.
- §1.67. Federal Priorities.

SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

- §1.71. Definition of Population Served.
- §1.72. Public Library Service.

- §1.73. Public Library: Legal Establishment.
 - §1.74. Local Operating Expenditures.
 - §1.75. Nondiscrimination.
 - §1.77. Public Library: Local Government Support.
 - §1.79. Provisional Accreditation of Library.
 - §1.80. Probational Accreditation of Library.
 - §1.81. Quantitative Standards for Accreditation of Library.
 - §1.82. Accreditation Based on Current Operating Budget.
 - §1.83. Other Requirements.
 - §1.84. Professional Librarian.
 - §1.85. Annual Report.
 - §1.86. Standards for Accreditation of Libraries Operated by Public School Districts, Institutions of Higher Education, Units of Local, State, or Federal Government, Accredited Non-Public Elementary or Secondary Schools, or Special or Research Libraries.
- SUBCHAPTER D GRANTS: SYSTEM OPERATION, INCENTIVE, ESTABLISHMENT, AND EQUALIZATION
- §1.91. System Operation Grants.
 - §1.92. Incentive Grants.
 - §1.94. Unserved County: Definition.
 - §1.96. System Operation Grant: Formula.
- SUBCHAPTER E. GRANTS: ELECTRONIC ACCESS
- §1.100. Standards for Local Public Library Internet Access.
- SUBCHAPTER F. SYSTEM ADVISORY COUNCIL
- §1.111. Advisory Council.
 - §1.112. Member Library Representatives.
 - §1.113. Advisory Council Election.
 - §1.114. Advisory Council Terms of Office.
 - §1.115. Advisory Council Officers.
 - §1.116. Representation on the Council.
 - §1.117. Council Officers, Not Reappointed as Library Representative.
 - §1.118. Advisory Council Vacancies.
 - §1.119. Federated County and Multi-county Representation.
 - §1.120. Council Review and Approval Process.
 - §1.121. Disqualification of Council Members.
 - §1.123. Voting by Member Library Representatives.

These rules were initially adopted in part to administer the Library Systems Act as mandated by Texas Government Code §§441.121 - 441.138.

The Commission has reviewed 13 Texas Administrative Code Chapter 1 and determined that the reasons for initially adopting these rules continue to exist.

No comments were received regarding the rule review.

The reviewed rules are readopted pursuant to the Commission's authority under Texas Government Code §2001.039, which requires a state agency to review rules every four years to either readopt, readopt with amendments, or repeal.

TRD-201900468
Jennifer Peters
Director
Texas State Library and Archives Commission
Filed: February 13, 2019



Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules on School Finance; Subchapter BB, Commissioner's Rules on Reporting Requirements; Subchapter CC, Commissioner's Rules Concerning School Facilities; Subchapter DD, Commissioner's Rules Concerning Missing Child Prevention and Identification Programs; Subchapter EE, Commissioner's Rules on Reporting Child Abuse and Neglect; Subchapter FF, Commissioner's Rules Concerning High School Diplomas for Certain Veterans; Subchapter GG, Commissioner's Rules Concerning Counseling Public School Students; Subchapter HH, Commissioner's Rules Concerning Classroom Supply Reimbursement Program; Subchapter II, Commissioner's Rules Concerning High School Allotment; Subchapter JJ, Commissioner's Rules Concerning Automatic College Admission; and Subchapter KK, Commissioner's Rules on County Boards of Education, pursuant to Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 61, Subchapters AA-KK, in the May 11, 2018 issue of the *Texas Register* (43 TexReg 3125).

Relating to the review of 19 TAC Chapter 61, Subchapter AA, the TEA finds that the reasons for adopting §§61.1010, 61.1012-61.1016, and §§61.1018-61.1020 continue to exist and readopts the rules. The TEA finds that the reasons for adopting §61.1011, Additional State Aid for Tax Reduction (ASATR), and §61.1017, Alternative Compensatory Education Allotment Calculation, do not continue to exist. The TEA received no comments related to the review of Subchapter AA. At a later date, the TEA plans to propose the repeal of §61.1011 and §61.1017.

Relating to the review of 19 TAC Chapter 61, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter BB. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 61, Subchapter CC, the TEA finds that the reasons for adopting §61.1032 and §§61.1034-61.1039 continue to exist and readopts the rules. The TEA finds that the reasons for adopting §61.1033, School Facilities Standards for Construction before January 1, 2004, do not continue to exist. The TEA received no comments related to the review of Subchapter CC. At a later date, the TEA plans to propose the repeal of §61.1033.

Relating to the review of 19 TAC Chapter 61, Subchapter DD, the TEA finds that the reasons for adopting Subchapter DD continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter DD. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 61, Subchapter EE, the TEA finds that the reasons for adopting Subchapter EE continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter EE. At a later date, the TEA plans to update §61.1051, Reporting Child Abuse and Neglect, to address sex trafficking in alignment with Senate Bill 2039, 85th Texas Legislature, Regular Session, 2017.

Relating to the review of 19 TAC Chapter 61, Subchapter FF, the TEA finds that the reasons for adopting Subchapter FF continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter FF. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 61, Subchapter GG, the TEA finds that the reasons for adopting Subchapter GG continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter GG. At a later date, the TEA plans to propose an amendment to §61.1071, Counseling Public School Students Regarding Higher Education, to align with changes from the 85th Texas Legislature, Regular Session, 2017.

Relating to the review of 19 TAC Chapter 61, Subchapter HH, the TEA finds that the reasons for adopting Subchapter HH continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter HH. At a later date, the TEA plans to propose an amendment to §61.1081, Teacher Supply Reimbursement Grant Program, to remove language related to an expiration date.

Relating to the review of 19 TAC Chapter 61, Subchapter II, the TEA finds that the reasons for adopting Subchapter II continue to exist and readopts the rules. The TEA received no comments related to the re-

view of Subchapter II. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 61, Subchapter JJ, the TEA finds that the reasons for adopting Subchapter JJ continue to exist and readopts the rule. The TEA received no comments related to the review of Subchapter JJ. No changes are necessary as a result of the review.

Relating to the review of 19 TAC Chapter 61, Subchapter KK, the TEA finds that the reasons for adopting Subchapter KK continue to exist and readopts the rules. The TEA received no comments related to the review of Subchapter KK. No changes are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 61.

TRD-201900471

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 13, 2019



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §401.317(k)(4)(D)

When the 10X multiplier is available:		
Power Play	Probability of Prize Increase	Chance of Occurrence
10X (Prize Won Times 10)	1 in 43	2.3255%
5X (Prize Won Times 5)	2 in 43	4.6512%
4X (Prize Won Times 4)	3 in 43	6.9767%
3X (Prize Won Times 3)	13 in 43	30.2326%
2X (Prize Won Times 2)	24 in 43	55.8140%
When the 10X multiplier is not available:		
Power Play	Probability of Prize Increase	Chance of Occurrence
10X (Prize Won Times 10)	0 in 42	0.0000%
5X (Prize Won Times 5)	2 in 42	4.7619%
4X (Prize Won Times 4)	3 in 42	7.1429%
3X (Prize Won Times 3)	13 in 42	30.9523%
2X (Prize Won Times 2)	24 in 42	57.1429%
Power Play does not apply to the Grand Prize. Except as provided in subparagraph (C) of this paragraph, a Power Play Match 5 prize is set at two million dollars (\$2 million), regardless of the multiplier selected.		

DISCLOSURE AND CONSENT
Medical Treatment and Surgical Procedures

TO THE PATIENT: You have the right to be informed about 1) your condition, 2) the recommended medical treatment or surgical procedure, and 3) the related risks. This disclosure is designed to provide you this information, so that you can decide whether to consent to receive this treatment/procedure. Please ask your physician/health care provider any remaining questions you have before signing this form.

Description of Medical Treatment and Surgical Procedure(s)

I voluntarily request my physician/health care provider [name/credentials] _____,
and other health care providers, to treat my condition which is: _____

I understand that the following treatment/procedure(s) are planned for me:

Potential for Additional Necessary Treatment/Procedure(s)

I understand that during my treatment/procedure(s) my physician/health care provider may discover other conditions which require additional or different treatment/procedure(s) than originally planned.

I authorize my physicians/health care providers to use their professional judgment to perform the additional treatment/procedure(s) they believe are needed.

Use of Blood

Please initial "Yes" or "No":

___ Yes ___ No

I consent to the use of blood and blood products as necessary for my health during the treatment/procedure(s). The risks that may occur with the use of blood and blood products are:

1. Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.
2. Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.
3. Severe allergic reaction, potentially fatal.

Risks Related to this Treatment/Procedure(s)

Just as there may be risks and hazards to my health without treatment, there are also risks and hazards related to the treatment/procedure(s) planned for me.

I understand that all treatment/procedure(s) involve the potential for some risk, ranging from minor to severe. These risks include infection, blood clots in veins, lungs or other organs, hemorrhage (severe bleeding), allergic reactions, poor wound healing, and death. I understand that risks may or may not happen with this treatment/procedure(s).

The chances of these occurring may be different for each patient based on the treatment/procedure(s) and the patient's current health.

Risks of this treatment/procedure(s) include, but are not limited to **[include List A risks here and additional risks if any]**:

Granting of Consent for this Treatment/Procedure(s)

In signing below, I consent to the treatment/procedure(s) described above. I acknowledge the following:

- I understand this treatment/procedure(s) does not guarantee a result or a cure to my condition.
- I have been given an opportunity to ask questions I may have about:
 1. Alternative forms of treatment,
 2. Risks of non-treatment
 3. Steps that will occur during my treatment/procedure(s), and
 4. Risks and hazards involved in the treatment/procedure(s).
- I believe I have enough information to give this informed consent.
- I certify this form has been fully explained to me.
- I have read this form or had it read to me.
- I understand the information on this form.

If any of those statements are not true for you, please talk to your physician/health care provider before continuing.

Patient/Other Legally Authorized Representative (signature required):

Print Name

Signature

If Legally Authorized Representative, list relationship to Patient: _____

Date: _____

Time: _____ A.M./P.M.

Witness:

Print Name

Signature

Address (Street or P.O. Box)

City, State, Zip Code

**Divulgación y consentimiento
Tratamiento médico y procedimientos quirúrgicos**

AL PACIENTE: Tiene derecho a ser informado sobre 1) su condición, 2) el tratamiento médico recomendado o el procedimiento quirúrgico, y 3) los riesgos relacionados. Esta divulgación está diseñada para proporcionarle esta información, de modo que usted pueda decidir si da su consentimiento para recibir este tratamiento / procedimiento. Pregunte a su médico / proveedor de atención médica cualquier pregunta que tenga antes de firmar este formulario.

Descripción del tratamiento médico y procedimiento (s) quirúrgico (s)

Solicito voluntariamente a mi médico / proveedor de atención médica [nombre / credenciales] _____, y otros proveedores de atención médica, para tratar mi condición que es:

Entiendo que el siguiente tratamiento / procedimiento está planeado para mí:

Potencial de tratamiento / procedimientos necesarios adicionales

Entiendo que durante mi tratamiento / procedimiento, mi médico / proveedor de atención médica puede descubrir otras afecciones que requieren tratamiento / procedimiento adicional o diferente al planeado originalmente.

Autorizo a mis médicos / proveedores de atención médica a usar su criterio profesional para realizar el tratamiento o los procedimientos adicionales que consideren necesarios.

Uso de la sangre

Por favor escriba "Sí" o "No":

Sí No

Consiento el uso de sangre y productos sanguíneos según sea necesario para mi salud durante el tratamiento / procedimiento. Los riesgos que pueden ocurrir con el uso de sangre y productos sanguíneos son:

1. Infección grave, que incluye pero no se limita a hepatitis y VIH que pueden causar daño a los órganos y deterioro permanente.
2. Lesión relacionada con la transfusión que resulta en el deterioro de los pulmones, el corazón, el hígado, los riñones y el sistema inmunológico.
3. Reacción alérgica grave, potencialmente mortal.

Riesgos relacionados con este tratamiento / procedimiento (s)

Al igual que puede haber riesgos y peligros para mi salud sin tratamiento, también existen riesgos y peligros relacionados con el tratamiento o los procedimientos planificados para mí.

Entiendo que todos los tratamientos / procedimientos implican el riesgo potencial, que van desde leves a graves. Estos riesgos incluyen infección, coágulos de sangre en las venas, pulmones u otros órganos, hemorragia (sangrado severo), reacciones alérgicas, mala cicatrización de heridas y muerte. Entiendo que los riesgos pueden o no suceder con este tratamiento / procedimiento (s).

Las posibilidades de que esto ocurra pueden ser diferentes para cada paciente según el tratamiento o los procedimientos y la salud actual del paciente.

Los riesgos de este tratamiento / procedimiento incluyen, pero no se limitan a **[Incluya aquí los riesgos de la Lista A y riesgos adicionales si los hay.]**:

Otorgamiento del consentimiento para este tratamiento / procedimiento (s)

Al firmar a continuación, doy mi consentimiento para el (los) tratamiento (s) descrito (s) arriba.
Reconozco lo siguiente:

- Entiendo que este tratamiento / procedimiento no garantiza un resultado o una cura para mi afección.
- Se me ha dado la oportunidad de hacer preguntas acerca de:
 1. Formas alternativas de tratamiento,
 2. Riesgos de no tratamiento,
 3. Pasos que ocurrirán durante mi tratamiento / procedimiento (s), y
 4. Riesgos y riesgos involucrados en el tratamiento / procedimiento (s).
- Creo que tengo suficiente información para dar este consentimiento informado.
- Certifico que este formulario me ha sido explicado completamente.
- He leído este formulario o me lo han leído.
- Entiendo la información en este formulario.

Si alguna de estas afirmaciones no es cierta para usted, hable con su médico / proveedor de atención médica antes de continuar.

Paciente / Otro Representante Legalmente Autorizado (firma requerida):

Imprimir Nombre

Firma

Si es un representante legalmente autorizado, indique la relación con el paciente: _____

Fecha: _____

Hora: _____ A.M./P.M.

Testigo:

Imprimir Nombre

Firma

Dirección (Calle o P.O. Caja)

Ciudad, Estado, Código postal

DISCLOSURE AND CONSENT FOR HYSTERECTOMY

TO THE PATIENT: You have the right to be informed about 1) your condition, 2) the recommended medical treatment or surgical procedure, and 3) the related risks. This disclosure is designed to provide you this information, so that you can decide whether to consent to receive this treatment/procedure. Please ask your physician/health care provider any remaining questions you have before signing this form.

Notice: Refusal to consent to a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect your right to future care or treatment.

Notice: You have the right to seek consultation from a second physician before deciding whether or not to consent.

Description of Medical Treatment and Surgical Procedure(s)

I voluntarily request my physician/health care provider [name/credentials]
_____, and other health care providers, to treat my condition which is:

I understand that the following treatment/procedure(s) are planned for me:

I understand that a hysterectomy is a removal of the uterus through an incision in the lower abdomen (abdominal hysterectomy) or vagina (vaginal hysterectomy).

I understand that the hysterectomy is permanent and not reversible. I understand that I will not be able to become pregnant or bear children.

Potential for Additional Necessary Treatment/Procedure(s)

I understand that additional surgery may be necessary to remove or repair other organs besides the uterus, including an ovary, tube, appendix, bladder, rectum, or vagina.

I understand during my treatment/procedure(s) my physician/health care provider may discover other conditions which require additional or different treatment/procedure(s) than originally planned.

I authorize my physicians/health care providers to use their professional judgment to perform the additional treatment/procedure(s) they believe are needed.

Use of Blood

Please initial "Yes" or "No":

___ Yes ___ No

I consent to the use of blood and blood products as necessary for my health during the treatment/procedure(s). The risks that may occur with the use of blood and blood products are:

1. Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.
2. Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.
3. Severe allergic reaction, potentially fatal.

Risks Related to this Treatment/Procedure(s)

Just as there may be risks and hazards to my health without treatment, there are also risks and hazards related to the treatment/procedure(s) planned for me.

I understand that all treatment/procedure(s) involve the potential for some risk, ranging from minor to severe. These risks include infection, blood clots in veins, lungs or other organs, hemorrhage (severe bleeding), allergic reactions, poor wound healing, and death. I understand that risks may or may not happen with this treatment/procedure(s).

The chances of these occurring may be different for each patient based on the treatment/procedure(s) and the patient's current health.

Risks of this treatment/procedure(s) include, but are not limited to:

Abdominal or Vaginal Hysterectomy:

1. Uncontrollable leakage of urine.
2. Injury to bladder.
3. Sterility.
4. Injury to the tube (ureter) between the kidney and the bladder.
5. Injury to the bowel and/or intestinal obstruction.
6. Need to convert to abdominal incision.

† For **laparoscopically assisted hysterectomy**, the additional risks include:

- Damage to intra-abdominal structures (e.g., bowel, bladder, blood vessels, or nerves).
- Intra-abdominal abscess and infectious complications.
- Trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation).
- Conversion of the procedure to an open procedure.
- Cardiac dysfunction.

† If a **power morcellator** in laparoscopic surgery is utilized, the additional risks include:

- If cancer is present, may increase the risk of the spread of cancer.
- Increased risk of damage to adjacent structures.

ADDITIONAL RISKS OR COMMENTS (line through if none): _____

Granting of Consent for this Treatment/Procedure(s)

In signing below, I consent to the treatment/procedure(s) described above. I acknowledge the following:

- I understand this treatment/procedure(s) does not guarantee a result or a cure to my condition.
- I have been given an opportunity to ask questions I may have about:
 1. Alternative forms of treatment,
 2. Risks of non-treatment
 3. Steps that will occur during my treatment/procedure(s), and
 4. Risks and hazards involved in the treatment/procedure(s).
- I believe I have enough information to give this informed consent.
- I certify this form has been fully explained to me.
- I have read this form or had it read to me.
- I understand the information on this form.

If any of those statements are not true for you, please talk to your physician/health care provider before continuing.

Name of Physician Explaining Procedure: _____

Name of Person Providing Materials: _____

Patient/Other Legally Authorized Representative (signature required):

Print Name

Signature

If Legally Authorized Representative, list relationship to Patient: _____

Date: _____

Time: _____ A.M./P.M.

Witness:

Print Name

Signature

Address (Street or P.O. Box)

City, State, Zip Code

DIVULGACIÓN Y CONSENTIMIENTO PARA LA HISTERECTOMÍA

AL PACIENTE: Tiene derecho a ser informado sobre 1) su condición, 2) el tratamiento médico recomendado o el procedimiento quirúrgico, y 3) los riesgos relacionados. Esta divulgación está diseñada para proporcionarle esta información, de modo que usted pueda decidir si da su consentimiento para recibir este tratamiento / procedimiento. Pregunte a su médico / proveedor de atención médica cualquier pregunta que tenga antes de firmar este formulario.

Aviso: La negativa a dar su consentimiento para una histerectomía no resultará en el retiro o la retención de los beneficios proporcionados por los programas o proyectos que reciben fondos federales ni afectará su derecho a recibir atención o tratamiento en el futuro.

Aviso: Usted tiene el derecho de buscar la consulta de un segundo médico antes de decidir si otorgar o no su consentimiento.

Descripción del tratamiento médico y procedimiento (s) quirúrgico (s)

Solicito voluntariamente a mi médico / proveedor de atención médica [nombre / credenciales] _____, y otros proveedores de atención médica, para tratar mi condición que es: _____

Entiendo que los siguientes tratamientos / procedimientos están planeados para mí:

Entiendo que una histerectomía es una extirpación del útero a través de una incisión en la parte inferior del abdomen (histerectomía abdominal) o la vagina (histerectomía vaginal).

Entiendo que la histerectomía es permanente y no reversible. Entiendo que no podré quedar embarazada ni tener hijos.

Potencial de tratamiento / procedimientos necesarios adicionales

Entiendo que puede ser necesaria una cirugía adicional para extirpar o reparar otros órganos además del útero, incluido un ovario, un tubo, un apéndice, una vejiga, un recto o una vagina.

Entiendo que durante mi tratamiento / procedimiento, mi médico / proveedor de atención médica puede descubrir otras afecciones que requieren tratamiento / procedimiento adicional o diferente al planeado originalmente.

Autorizo a mis médicos / proveedores de atención médica a utilizar su criterio profesional para realizar el tratamiento o los procedimientos adicionales que consideren necesarios.

Uso de la sangre

Por favor escriba "Sí" o "No":

___ Sí ___ No

Consiento el uso de sangre y productos sanguíneos según sea necesario para mi salud durante el tratamiento / procedimiento. Los riesgos que pueden ocurrir con el uso de sangre y productos sanguíneos son:

1. Infección grave que incluye, entre otras, hepatitis y VIH, que pueden provocar daños en los órganos y deterioro permanente.
2. Lesión relacionada con la transfusión que resulta en el deterioro de los pulmones, el corazón, el hígado, los riñones y el sistema inmunológico.
3. Reacción alérgica grave, potencialmente mortal.

Riesgos relacionados con este tratamiento / procedimiento (s)

Al igual que puede haber riesgos y peligros para mi salud sin tratamiento, también existen riesgos y peligros relacionados con el tratamiento o los procedimientos planificados para mí.

Entiendo que todos los tratamientos / procedimientos implican el riesgo potencial, que van desde leves a graves. Estos riesgos incluyen infección, coágulos de sangre en las venas, pulmones u otros órganos, hemorragia (sangrado severo), reacciones alérgicas, mala cicatrización de heridas y muerte. Entiendo que los riesgos pueden o no suceder con este tratamiento / procedimiento (s).

Las posibilidades de que esto ocurra pueden ser diferentes para cada paciente según el tratamiento o los procedimientos y la salud actual del paciente.

Los riesgos de este tratamiento / procedimiento incluyen, entre otros, los siguientes:

Histerectomía abdominal o vaginal:

1. Fuga incontrolable de orina.
2. Lesiones en la vejiga.
3. Esterilidad.
4. Lesión del tubo (uréter) entre el riñón y la vejiga.
5. Lesión al intestino y / o obstrucción intestinal.
6. Necesidad de convertir a incisión abdominal.

† Para la **histerectomía asistida por laparoscopia**, los riesgos adicionales incluyen:

- Daño a las estructuras intraabdominales (por ejemplo, intestino, vejiga, vasos sanguíneos o nervios).
- Absceso intraabdominal y complicaciones infecciosas.
- Complicaciones en el sitio del trocar (por ejemplo, hematoma / sangrado, pérdida de líquido o formación de hernia).
- Conversión del procedimiento a un procedimiento abierto.
- Disfunción cardíaca.

† Si se utiliza un **morcelador de poder** en cirugía laparoscópica, los riesgos adicionales incluyen:

- Si el cáncer está presente, puede aumentar el riesgo de propagación del cáncer.
- Mayor riesgo de daños a las estructuras adyacentes.

RIESGOS O COMENTARIOS ADICIONALES (línea a través de si no hay): _____

Otorgamiento del consentimiento para este tratamiento / procedimiento (s)

Al firmar a continuación, doy mi consentimiento para el (los) tratamiento (s) descrito (s) arriba.
Reconozco lo siguiente:

- Entiendo que este tratamiento / procedimiento no garantiza un resultado o una cura para mi afección.
- Se me ha brindado la oportunidad de hacer preguntas sobre:
 1. Formas alternativas de tratamiento,
 2. Riesgos de no tratamiento.
 3. Pasos que ocurrirán durante mi tratamiento / procedimiento (s), y
 4. Riesgos y riesgos involucrados en el tratamiento / procedimiento (s).
- Creo que tengo suficiente información para dar este consentimiento informado.
- Certifico que este formulario me ha sido explicado completamente.
- He leído este formulario o me lo han leído.
- Entiendo la información en este formulario.

Si alguna de estas afirmaciones no es cierta para usted, hable con su médico / proveedor de atención médica antes de continuar.

Nombre del médico que explica el procedimiento: _____

Nombre de la persona que proporciona los materiales: _____

Paciente / Otro Representante Legalmente Autorizado (firma requerida):

Imprimir Nombre

Firma

Si es un representante legalmente autorizado, indique la relación con el paciente: _____

Fecha: _____

Hora: _____ A.M./P.M.

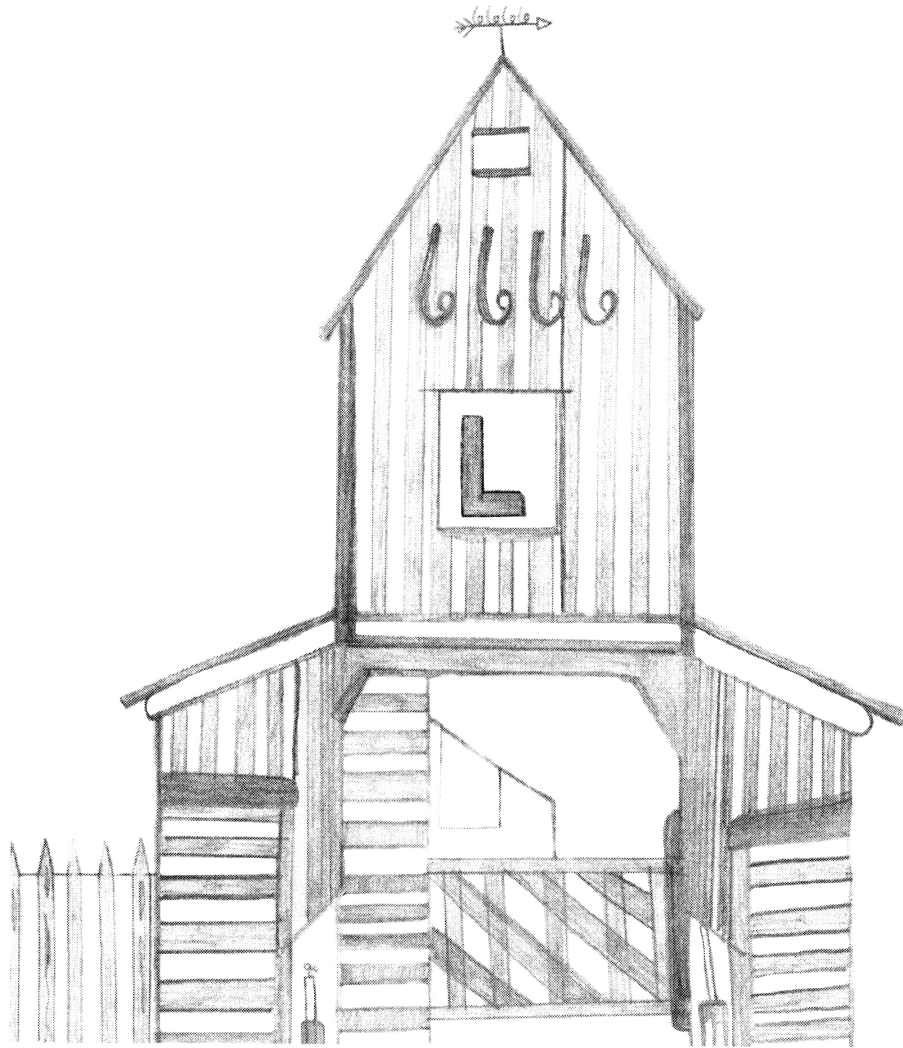
Testigo:

Imprimir Nombre

Firma

Dirección (Calle o P.O. Caja)

Ciudad, Estado, Código postal



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.

Texas State Affordable Housing Corporation

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 10:00 a.m. on March 8, 2019, at 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702, on the proposed issuance by the Issuer of one or more series of qualified mortgage revenue bonds (the "Bonds") under section 143(a) of the Internal Revenue Code of 1986. The Bonds will be issued pursuant to a plan of finance to provide financing for residential mortgages throughout the State of Texas for eligible purchasers of single family owner-occupied residences (the "Project"). The maximum aggregate face amount of the Bonds to be issued in one or more series with respect to the Project is \$400,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer, and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof.

Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to the Issuer at Texas State Affordable Housing Corporation, 2200 East Martin Luther King Jr. Boulevard, Austin, Texas 78702, Attention: Joniel Crim, Homeownership Programs Director, (512) 477-3561.

Individuals who require auxiliary aids in order to attend this meeting should contact Cynthia Gonzales, at (512) 477-3565 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Joniel Crim at JCrim@tsahc.org.

Joniel Crim

Homeownership Programs Director

Texas State Affordable Housing Corporation

2200 East Martin Luther King Jr. Boulevard

Austin, Texas 78702

TRD-201900423

David Long

President

Texas State Affordable Housing Corporation

Filed: February 11, 2019

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Harris County, Texas, and the State of Texas v. Juan Mendo and Mahara Mendo*, Cause No. 2018-13077; in the 215th Judicial District Court, Harris County, Texas.

Nature of the Suit: Defendants Juan Mendo and Mahara Mendo are owners of real property in Crosby, Harris County, Texas. Since late 2015, they have allegedly been violating the Texas Health and Safety Code, the Texas Water Code, and the Harris County Floodplain Regulations by installing an on-site sewage facility (OSSF) on their property without relevant permits, and causing discharge of wastewater to the ground. After suit was filed, Defendants have submitted and received an approved OSSF application. The State of Texas is a necessary and indispensable party to the suit.

Proposed Agreed Judgment: The proposed Agreed Final Judgment includes a permanent injunction to ensure Defendants' continued compliance; and assesses against Defendants civil penalties in the amount of \$1,500 to be equally divided between Harris County and the State; and attorney's fees in the amount of \$1,000 to be equally divided between Harris County and the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Tyler Ryska, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201900508

Ryan Vassar

Chief, General Counsel Division

Office of the Attorney General

Filed: February 13, 2019

Comptroller of Public Accounts

Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Chapter 54, Subchapters F, G, H, I and J, Texas Education Code, the Texas Comptroller of Public Accounts ("Comptroller") on behalf of the Texas Prepaid Higher Education Tuition Board ("Board") announces its Request for Proposals No. 216a ("RFP") for the purpose of obtaining investment consulting ser-

vices for the Board. The selected consultant ("Consultant") will advise and assist the Board and Comptroller in administering all of the Board's investment activities related to the Texas Tomorrow Funds ("Funds") and the Texas Achieving a Better Life ("ABLE") Program. The Funds include the Texas Tomorrow Fund (Prepaid Program), the Texas College Savings Plan, the Lonestar 529 Plan, the Texas Tuition Promise Fund, and the Texas Save and Match Program. Comptroller, as Chair and Executive Director of the Board, is issuing this RFP on behalf of the Board so that the Board may move forward with retaining the necessary investment consultant. Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the Consultant will be expected to begin performance of the contract on or about September 1, 2019, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Vicki L. Rees, Contracts Attorney, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://www.txsmartbuy.com/sp> after 10:00 a.m. Central Time ("CT") on Friday, February 22, 2019.

Questions: All questions regarding the RFP must be received in the Issuing Office no later than 2:00 p.m. CT on Monday, March 4, 2019. Prospective proposers are encouraged to fax or e-mail Questions to (512) 463-3669 or contracts@cpa.texas.gov to ensure timely receipt. On or about Friday, March 8, 2019, the Comptroller expects to post responses to questions on the ESBD. Questions received after the deadline will not be considered. Respondents shall be solely responsible for verifying timely receipt of Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel no later than 2:00 p.m. CT, on Monday, April 1, 2019. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for ensuring timely receipt of Proposals in the Issuing Office.

Evaluation criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - February 22, 2019, after 10:00 a.m. CT; Questions Due - March 4, 2019, 2:00 p.m. CT; Official Responses to Questions posted - March 8, 2019; Proposals Due - April 1, 2019, 2:00 p.m. CT; Contract Execution - August 1, 2019, or as soon thereafter as practical; Commencement of Work - September 1, 2019. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a proposal.

TRD-201900500
Vicki L. Rees
Contracts Attorney
Comptroller of Public Accounts
Filed: February 13, 2019

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/18/19 - 02/24/19 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/18/19 - 02/24/19 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201900432
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 12, 2019

◆ ◆ ◆
Texas Education Agency

Public Notice of Texas Request of a Waiver from the Every Student Succeeds Act Testing Requirements for Accelerated Students

Filing Date. February 13, 2019

Purpose and Scope of Waiver Request. Texas is requesting a waiver from the U.S. Department of Education (USDE) to permit advanced students in mathematics and English language arts (ELA) to take secondary level coursework and be assessed in a constructive manner for the 2018-2019 school year.

As part of its Every Student Succeeds Act (ESSA) State Plan, the Texas Education Agency (TEA) will request that the Texas Legislature appropriate funds beginning in the 2019-2020 school year for high school students who completed state testing requirements prior to high school to take once either the ACT or the SAT to fulfill federal testing requirements. TEA would then adopt additional administrative rules that will require all students to take appropriate assessments to be used for federal accountability. This plan is contingent on the legislature appropriating funds for this purpose.

As a result, Texas is seeking a waiver from this requirement pursuant to the Elementary and Secondary Education Act of 1965 (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)(C), while it works to better align its assessment and accountability systems with ESSA requirements. The requested waiver would be effective through the 2018-2019 school year. A copy of the waiver request is available on the TEA website at https://tea.texas.gov/about_tea/laws_and_rules/essa/every_student_succeeds_act/.

In addition, the TEA is withdrawing a proposed amendment to 19 TAC §101.3011, Implementation and Administration of Academic Content Area Assessment Instruments. The withdrawal of the proposed amendment is published in the Withdrawn Rules section of this issue of the *Texas Register*.

Public Comments. The public comment period on the waiver request begins February 22, 2019, and ends March 25, 2019. Comments on the waiver request may be submitted electronically to performance.reporting@tea.texas.gov.

Further Information. For more information, contact Jamie Crowe, director of performance reporting, by mail at Performance Reporting Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9704; or by email at performance.reporting@tea.texas.gov.

TRD-201900474

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 13, 2019



Request for Applications (RFA) Concerning the 2019-2021 Pathways in Technology Early College High Schools (P-TECH) and Industry Cluster Innovative Academies (ICIA) Success Grant Program

Filing Authority. The availability of grant funds under RFA #701-19-108 is authorized by General Appropriations Act, Article III, Riders 49 and 67, 85th Texas Legislature, Regular Session, 2017, and Texas Education Code (TEC), §§29.551-29.556 (P-TECH) and §29.908, Early College Education

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-19-108 from local educational agencies (LEAs) that serve students in Grades 9-12, or are already serving students in Grade 9, Grades 9 and 10, or Grades 9-11 and will progressively scale up by adding at least one grade level per year, and have been implementing a program similar to P-TECH or an ICIA that allows students to earn industry credentials and associate degrees, engage in appropriate work-based education at every grade level, and participate in programs that create a seamless transition to additional education or the competitive job market; have established partnerships with at least one institution of higher education (IHE) defined in a written agreement; and have established partnership(s) with employer(s) defined in a written agreement.

Description. The purpose of 2019-2021 P-TECH and ICIA Success Grant Program is to provide a smooth transitional experience for students to receive a high school diploma, a work credential, and an associate's degree and participate in work-based education programs on or before the sixth anniversary of a student's first day of high school. Utilizing partnership agreements with employers and IHEs, the P-TECH and ICIA program offers a coherent sequence of classes that leads to a high school diploma, an associate's degree, a credential, and work experiences that lead to the opportunity for students to receive priority in interviewing with partnering employers when they have completed the program.

Dates of Project. The 2019-2021 P-TECH and ICIA Success Grant Program will be implemented during the 2019-2020 and 2020-2021 school years. Applicants should plan for a starting date of no earlier than June 1, 2019, and an ending date of no later than June 15, 2021.

Project Amount. Approximately \$1.4 million is available for funding the 2019-2021 P-TECH and ICIA Success Grant Program. It is anticipated that seven grants will be awarded ranging in amounts up to \$200,000. This project is funded 100% with state funds.

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.

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/Grant-ProgramSearch.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 PTECH@tea.texas.gov, the TEA email address identified in the program guidelines of the RFA, no later than Friday, March 15, 2019. 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 Thursday, March 21, 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), Tuesday, April 9, 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-201900475

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: February 13, 2019



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 25, 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 **March 25, 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: AGRIMUM U.S. INCORPORATED; DOCKET NUMBER: 2018-0910-MLM-E; IDENTIFIER: RN101865715; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: fertilizer manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Numbers 19778 and PSDTX1326, Special Conditions Number 1, and Federal Operating Permit Number O1689, General Terms and Conditions and Special Terms and Conditions Number 8, by failing to comply with the maximum allowable emission rates; and 30 TAC §331.63(h) and 40 Code of Federal Regulations §270.1 and Underground Injection Control Permit Numbers WDW115 and WDW274, Provision Number V.C, by failing to maintain chemical or physical characteristics of the injected fluids within specified permit limits for the protection of the injection well, associated facilities, and injection zone and to ensure proper operation of the plant; PENALTY: \$109,650; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$43,860; ENFORCEMENT COORDINATOR: Berenice Munoz, (512) 239-1661; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: Alan Danner dba Country Paradise Mobile Home & RV Park and Mary Danner dba Country Paradise Mobile Home & RV Park; DOCKET NUMBER: 2018-1533-PWS-E; IDENTIFIER: RN109428318; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(E)(i) and (ii), and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 1.0 gallon per minute per connection and failing to provide a minimum pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons required; and 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the water system under the direct supervision of a water works operator who holds a Class D or higher license; PENALTY: \$620; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2018-0159-PWS-E; IDENTIFIER: RN102682358; LOCATION: Hamshire, Jefferson 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 (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter (mg/L) of free chlorine throughout the distribution system at all times; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can easily be located during emergencies; 30 TAC §290.46(q)(1), by failing to issue a boil water notification to customers

of the facility within 24 hours of a low disinfectant residual using the prescribed notification format as specified in 30 TAC §290.47(c); and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: \$3,286; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Cameron; DOCKET NUMBER: 2018-1553-PWS-E; IDENTIFIER: RN101392215; LOCATION: Cameron, Milam County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$690; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Crockett; DOCKET NUMBER: 2018-1586-PWS-E; IDENTIFIER: RN101394708; LOCATION: Crockett, Houston County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measure as total chlorine) throughout the distribution system at all times; 30 TAC §290.46(e)(3)(C) and THSC, §341.033(a), by failing to operate a surface water purchase system serving more than 1,000 connections under the direct supervision of at least two operators who hold a Class C or higher surface water license, and who each work at least 16 hours per month; 30 TAC §290.46(z), by failing to create a nitrification action plan for all systems distributing chloraminated water; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: \$650; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Orange; DOCKET NUMBER: 2018-1631-PWS-E; IDENTIFIER: RN101385854; LOCATION: Orange, Orange County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection is provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or backflow prevention assembly, as identified in 30 TAC §290.47(f); PENALTY: \$10,080; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-2527; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Clear Lake Cogeneration Limited Partnership; DOCKET NUMBER: 2018-1287-AIR-E; IDENTIFIER: RN100239672; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: cogeneration plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O90, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Francisco Valenzuela dba Prontos Septic Services; DOCKET NUMBER: 2018-0752-SLG-E; IDENTIFIER: RN105359236; LOCATION: San Antonio, Bexar County; TYPE

OF FACILITY: unregistered sludge transporter business; RULES VIOLATED: 30 TAC §312.9 and TWC, §5.702, by failing to pay associated late fees for TCEQ Financial Administration Account Number 0803935H; 30 TAC §312.142(a) and (d), by failing to submit an application to renew the sludge transporter registration biennially; 30 TAC §312.144(e), by failing to maintain records pertaining to the pathogen and vector attraction reduction requirements on the vehicles for a minimum of one month and at the beneficial use site and transporter office for a minimum of five years; 30 TAC §312.145(a)(2) and (7), by failing to record all required information on trip tickets; and 30 TAC §312.145(b)(4), by failing to timely submit to the executive director an annual summary of sludge transporter activities by July 1, 2017; PENALTY: \$12,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Holt Crushing, LLC; DOCKET NUMBER: 2018-0917-AIR-E; IDENTIFIER: RN110316312; LOCATION: Barnhart, Irion County; TYPE OF FACILITY: portable rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(10) COMPANY: JAY OMKARA INCORPORATED dba Classic Mart; DOCKET NUMBER: 2018-1419-PST-E; IDENTIFIER: RN102321874; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.10(b)(2), by failing to assure that all UST record keeping requirements are met; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.51(b)(2) and TWC, §26.3475(c)(2), by failing to equip the UST system with spill and overflow prevention equipment that is designed, installed, and maintained in a manner that will prevent any spilling or overfilling of regulated substances; PENALTY: \$7,352; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(11) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2018-1321-AIR-E; IDENTIFIER: RN100633650; LOCATION: Channelview, Harris County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 19613, Special Conditions Number 1, Federal Operating Permit Number O1387, General Terms and Conditions and Special Terms and Conditions Number 25, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,525; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,610; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: North Breeze MHC, LLC; DOCKET NUMBER: 2018-1344-PWS-E; IDENTIFIER: RN101262665; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(n)(3), by failing to keep on file

copies of well completion data, as defined in 30 TAC §290.41(c)(3)(A), for as long as the well remains in service; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$102; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Perryton Independent School District; DOCKET NUMBER: 2018-1609-PST-E; IDENTIFIER: RN101742575; LOCATION: Perryton, Ochiltree County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(B) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days and failing to provide release detection for the suction piping associated with the UST system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: Pioneer Natural Resources USA, Incorporated; DOCKET NUMBER: 2018-0751-AIR-E; IDENTIFIER: RN100226943; LOCATION: Masterson, Potter County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 20711 and PSDTX798M1, Special Conditions Number 2, Federal Operating Permit Number O3003, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates and failing to prevent unauthorized emissions; PENALTY: \$235,500; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(15) COMPANY: PIRPIAI, LLC; DOCKET NUMBER: 2018-1513-PWS-E; IDENTIFIER: RN101443778; LOCATION: Vidor, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(2), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(f); 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$1,300; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Raymond Morton; DOCKET NUMBER: 2017-0640-AIR-E; IDENTIFIER: RN109732891; LOCATION: Melissa, Collin County; TYPE OF FACILITY: rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air emissions; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Stillman Enterprises, LLC; DOCKET NUMBER: 2018-1334-AIR-E; IDENTIFIER: RN109744433; LOCATION: Po-teet, Atascosa County; TYPE OF FACILITY: bulk sand handling site; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air emissions; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: The Chemours Company FC, LLC; DOCKET NUMBER: 2018-0772-AIR-E; IDENTIFIER: RN108202599; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 21130, Special Conditions Numbers 1 and 3B, Federal Operating Permit Number (FOP) O1845, General Terms and Conditions and Special Terms and Conditions Number 6, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate and emissions limit during a stack test for the Power Sulfuric Acid Stack, Emissions Point Number SA-01; and 30 TAC §§122.121, 122.133(2), and 122.241(b) and THSC, §382.054 and §382.085(b), by failing to submit a permit renewal application at least six months prior to the expiration of an FOP; PENALTY: \$73,537; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$29,415; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: The Lakes of Argyle, LLC; DOCKET NUMBER: 2018-1467-MLM-E; IDENTIFIER: RN109641936; LOCATION: Argyle, Denton County; TYPE OF FACILITY: residential subdivision; RULES VIOLATED: 30 TAC §297.11, and TWC, §11.081 and §11.121, by failing to obtain authorization prior to beginning construction of any work designed for the storage, taking, or diversion of water; 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP) Number TXR15412A, Part III, Section E.1 and F.1(g)(iii) and (v), by failing to update the Stormwater Pollution Prevention Plan within seven days of a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants; 30 TAC §305.125(1) and TPDES CGP Number TXR15412A, Part III, Section F.2(c)(i)(A)(3), by failing to utilize equivalent control measures until final stabilization of the site, if a sedimentation basin is not feasible; 30 TAC §305.125(1) and TPDES CGP Number TXR15412A, Part III, Section F.7(b)(iv), by failing to identify incidents of non-compliance observed during site inspections; and 30 TAC §305.125(1) and TPDES CGP Number TXR15412A, Part III, Section G.1(f), by failing to provide and maintain appropriate natural buffers if feasible and as necessary, around surface water in the state; PENALTY: \$6,492; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-0779; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: United States Department of the Navy; DOCKET NUMBER: 2018-0697-PST-E; IDENTIFIER: RN101131332; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: naval air station; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(21) COMPANY: Walter J. Carroll Water Company, Incorporated; DOCKET NUMBER: 2018-1729-PWS-E; IDENTIFIER:

RN102681970; LOCATION: Waxahachie, Ellis 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: \$142; ENFORCEMENT COORDINATOR: Ross Luedtke, (254) 761-3036; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201900428
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 12, 2019

◆ ◆ ◆
Amended Notice of Public Meeting for TPDES Permit for Industrial Wastewater (to Change the Date and Location of the Public Meeting) New Permit No. WQ0005253000

APPLICATION. Port of Corpus Christi Authority of Nueces County, P.O. Box 1541, Corpus Christi, Texas 78403, which proposes to operate the Harbor Island Property - Former FINA Tank Farm, a seawater desalination facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005253000, to authorize the discharge of water treatment wastes at a daily average flow not to exceed 95,600,000 gallons per day via Outfall 001.

The facility will be located adjacent to State Highway 361 just northeast of the Ferry Landing, in Nueces County, Texas 78336. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.845833&lng=-97.0675&zoom=13&type=r>.

The effluent will be discharged via pipe directly to Corpus Christi Bay in Segment No. 2481 of the Bays and Estuaries. The designated uses for Segment No. 2481 are primary contact recreation, exceptional aquatic life use, and oyster waters.

In accordance with 30 TAC §307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Corpus Christi Bay, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ executive director reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

The TCEQ executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the executive director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, April 8, 2019, at 7:00 p.m.

Port Aransas Civic Center

710 W. Avenue A

Port Aransas, Texas 78373

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en Español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at La Retama Central Library, 805 Comanche Street, Corpus Christi, Texas. Further information may also be obtained from Port of Corpus Christi Authority of Nueces County at the address stated above or by calling Ms. Sarah L. Garza, Director of Environmental Planning, at (361) 885-6163.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued: February 12, 2019

TRD-201900512

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 13, 2019



Cancellation of Public Meeting

Sam Kane Beef Processors, LLC; Air Quality Permit No. 3806

This is notice that the public meeting previously scheduled for February 21, 2019, has been cancelled. **The public meeting will be rescheduled**

for a later date. You will receive notice of the rescheduled public meeting by mail. If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

TRD-201900511

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 13, 2019



Enforcement Orders

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2016-0828-AIR-E on February 13, 2019, assessing \$310,500 in administrative penalties with \$62,100 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CIRCLE K STORES INC., Docket No. 2016-1051-PST-E on February 13, 2019, assessing \$138,150 in administrative penalties with \$27,630 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southwest Independent School District, Docket No. 2016-1509-PST-E on February 13, 2019, assessing \$8,625 in administrative penalties with \$1,725 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TIRE DISTRIBUTORS BLACK GOLD INC, Docket No. 2017-0165-MSW-E on February 13, 2019, assessing \$25,000 in administrative penalties with \$15,500 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Terrell, Docket No. 2017-0299-MLM-E on February 13, 2019, assessing \$13,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BEECHWOOD WATER SUPPLY CORPORATION, Docket No. 2017-0501-PWS-E on February 13, 2019, assessing \$2,628 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Karim S. Karedia dba QS 346, Docket No. 2017-0746-PST-E on February 13, 2019, assessing \$8,250 in administrative penalties with \$1,650 deferred. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Corix Utilities (Texas) Inc., Docket No. 2017-0773-MWD-E on February 13, 2019, assessing \$13,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Los Botines Water Supply Corporation, Docket No. 2017-0846-PWS-E on February 13, 2019, assessing \$6,612 in administrative penalties with \$6,612 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CROWN Cork & Seal USA, Inc., Docket No. 2017-0910-AIR-E on February 13, 2019, assessing \$86,187 in administrative penalties with \$17,237 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City Of Alvord, Docket No. 2017-0924-MWD-E on February 13, 2019, assessing \$11,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Plainview, Docket No. 2017-1053-MLM-E on February 13, 2019, assessing \$17,376 in administrative penalties with \$3,475 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KSF Realty Group LLC dba Caddo Mills Food Mart, Docket No. 2017-1067-PST-E on February 13, 2019, assessing \$8,063 in administrative penalties with \$1,612 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Fairfield, Docket No. 2017-1121-MLM-E on February 13, 2019, assessing \$25,000 in administrative penalties with \$5,000 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CRSR International Inc dba Linden Food Mart, Docket No. 2017-1267-PST-E on February 13, 2019, assessing \$17,875 in administrative penalties with \$3,575 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Operating Company, LP, Docket No. 2017-1373-AIR-E on February 13, 2019, assessing \$50,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lucite International, Inc., Docket No. 2017-1401-AIR-E on February 13, 2019, assessing

\$76,500 in administrative penalties with \$15,300 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Arturo Briseno, Madeleine Briseno, DAIRY FARMERS OF AMERICA, INC. and Western Dairy Transport, L.L.C., Docket No. 2017-1406-IHW-E on February 13, 2019, assessing \$55,746 in administrative penalties with \$11,149 deferred. Information concerning any aspect of this order may be obtained by contacting Jonathan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RED RIVER FARM CO-OP, INC., Docket No. 2017-1485-PST-E on February 13, 2019, assessing \$39,563 in administrative penalties with \$7,912 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Municipal Utility District No. 285, Docket No. 2017-1590-MWD-E on February 13, 2019, assessing \$17,187 in administrative penalties with \$3,437 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding KIRK SHEET METAL COMPANY, INC., Docket No. 2017-1594-PST-E on February 13, 2019, assessing \$8,889 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Isaac Ta, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TPC Group LLC, Docket No. 2017-1625-AIR-E on February 13, 2019, assessing \$85,078 in administrative penalties with \$17,015 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LAGUNA VISTA, LIMITED, Docket No. 2017-1645-PWS-E on February 13, 2019, assessing \$35,215 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Fresh water Supply District 1-B, Docket No. 2018-0018-PWS-E on February 13, 2019, assessing \$742 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NABI & RAAIA LLC dba Poco Loco Market, Docket No. 2018-0044-PST-E on February 13, 2019, assessing \$7,940 in administrative penalties with \$1,588 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Llano County Municipal Utility District 1, Docket No. 2018-0099-PWS-E on February 13, 2019,

assessing \$208 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AMERICAN PETROLEUM WELDING, INC., Docket No. 2018-0100-PWS-E on February 13, 2019, assessing \$560 in administrative penalties with \$345 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Atascosa Rural Water Supply Corporation, Docket No. 2018-0134-PWS-E on February 13, 2019, assessing \$2,600 in administrative penalties with \$2,600 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mauser USA, LLC, Docket No. 2018-0135-AIR-E on February 13, 2019, assessing \$12,187 in administrative penalties with \$2,437 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FOREST WATER SUPPLY CORPORATION, Docket No. 2018-0281-PWS-E on February 13, 2019, assessing \$420 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201900502

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 13, 2019



Enforcement Orders

An agreed order was adopted regarding Greg L. Lewis, Docket No. 2015-1638-LII-E on February 12, 2019, assessing \$3,330 in administrative penalties with \$666 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Driscoll, Docket No. 2017-1319-PWS-E on February 12, 2019, assessing \$440 in administrative penalties with \$88 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding J-Country Bar, LLC, Docket No. 2017-1371-PWS-E on February 12, 2019, assessing \$150 in administrative penalties with \$30 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fuel Centers Environmental Management, LLC dba Payless Fuel Center of Mesquite, Docket No. 2017-1454-PST-E on February 12, 2019, assessing \$3,750 in admin-

istrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Zahid Sattar dba EZN Food Mart, Docket No. 2017-1556-PST-E on February 12, 2019, assessing \$3,724 in administrative penalties with \$744 deferred. Information concerning any aspect of this order may be obtained by contacting Jo Hunsberger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Port Neches, Docket No. 2017-1607-PWS-E on February 12, 2019, assessing \$3,161 in administrative penalties with \$632 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Advanced Paving Acquisition, Ltd. dba Advanced Paving, Docket No. 2017-1615-PST-E on February 12, 2019, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Rahim Momin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding S. M. MOON INVESTMENTS CORPORATION dba Texaco Food Mart, Docket No. 2018-0123-PST-E on February 12, 2019, assessing \$3,251 in administrative penalties with \$650 deferred. Information concerning any aspect of this order may be obtained by contacting Rahim Momin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SMA Ventures, LLC dba Salt Creek Grocery, Docket No. 2018-0182-PST-E on February 12, 2019, assessing \$4,776 in administrative penalties with \$955 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RAJU SHORT STOP INC, Docket No. 2018-0195-PST-E on February 12, 2019, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Varsila Trading LLC, Docket No. 2018-0211-PST-E on February 12, 2019, assessing \$5,812 in administrative penalties with \$1,162 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding United States Army Corps of Engineers, Docket No. 2018-0217-PWS-E on February 12, 2019, assessing \$275 in administrative penalties with \$55 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Flint Hills Resources Port Arthur, LLC, Docket No. 2018-0323-AIR-E on February 12, 2019, assessing \$7,125 in administrative penalties with \$1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding QUICKIE BEES KINGSBURY, LLC dba Quickie Bees 2, Docket No. 2018-0339-PST-E on February 12, 2019, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MNR VENTURES, LLC dba Take A Break, Docket No. 2018-0345-PST-E on February 12, 2019, assessing \$4,624 in administrative penalties with \$924 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Municipal Golf Association - SA dba Olmos Basin Golf Course, Docket No. 2018-0428-PST-E on February 12, 2019, assessing \$3,188 in administrative penalties with \$637 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CHEVRON PHILLIPS CHEMICAL COMPANY LP, Docket No. 2018-0461-PWS-E on February 12, 2019, assessing \$697 in administrative penalties with \$139 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Maria Teresa Nava dba 1015 Super Market, Docket No. 2018-0483-PST-E on February 12, 2019, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Warehouse Rack Company LP, Docket No. 2018-0512-AIR-E on February 12, 2019, assessing \$1,000 in administrative penalties with \$200 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AMC Creekside LLC, Docket No. 2018-0516-PWS-E on February 12, 2019, assessing \$431 in administrative penalties with \$86 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding M. Farah Enterprise Inc. dba Domino Truck Stop, Docket No. 2018-0521-PST-E on February 12, 2019, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Devon Gas Services, L.P., Docket No. 2018-0523-AIR-E on February 12, 2019, assessing

\$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CENTERGAS FUELS, INC., Docket No. 2018-0529-PST-E on February 12, 2019, assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Longview Independent School District, Docket No. 2018-0530-PST-E on February 12, 2019, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Boy Scouts of America, Alamo Area Council, Inc., Docket No. 2018-0617-PWS-E on February 12, 2019, assessing \$100 in administrative penalties with \$20 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Felipe de Jesus Garza dba Juniors Drive Inn & Meat Market, Docket No. 2018-0631-PST-E on February 12, 2019, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MSSS ENTERPRISES INC. dba S K Food Mart, Docket No. 2018-0674-PST-E on February 12, 2019, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding QAAF INC dba The King Mart, Docket No. 2018-0675-PST-E on February 12, 2019, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Roel Rolando Macias, Jr. dba G & G Mini Mart, Docket No. 2018-0749-PST-E on February 12, 2019, assessing \$4,875 in administrative penalties with \$975 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Robin J. Hassan dba Spring Branch Corner Store, Docket No. 2018-0764-PST-E on February 12, 2019, assessing \$2,562 in administrative penalties with \$512 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SIBER ENTERPRISE, INC. dba Star Food N Grocery, Docket No. 2018-0821-PST-E on February 12, 2019, assessing \$3,000 in administrative penalties with \$600 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ANTOINE CHEVRON INVESTMENTS LLC dba Handi Plus #333, Docket No. 2018-0822-PST-E on February 12, 2019, assessing \$5,562 in administrative penalties with \$1,112 deferred. Information concerning any aspect of this order may be obtained by contacting Rahim Momin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding MHI Partnership LTD, Docket No. 2018-0873-WQ-E on February 12, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2018-0904-PWS-E on February 12, 2019, assessing \$2,704 in administrative penalties with \$540 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Crystal Marie Ellis, Docket No. 2018-1017-WOC-E on February 12, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WALTER J. CARROLL WATER COMPANY, INC., Docket No. 2018-1127-PWS-E on February 12, 2019, assessing \$423 in administrative penalties with \$84 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Anthony Palumbo, Docket No. 2018-1133-WQ-E on February 12, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2018-1290-PWS-E on February 12, 2019, assessing \$1,653 in administrative penalties with \$330 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2018-1373-PWS-E on February 12, 2019, assessing \$1,247 in administrative penalties with \$249 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding OCH Land LLC, Docket No. 2018-1409-WQ-E on February 12, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Brookson Builders, L.L.C., Docket No. 2018-1442-WQ-E on February 12, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding ACME BRICK COMPANY, Docket No. 2018-1448-WR-E on February 12, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2018-1624-PWS-E on February 12, 2019, assessing \$446 in administrative penalties with \$89 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201900503

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 13, 2019



Notice of a Public Meeting and a Proposed Renewal with Amendment of General Permit TXG920000 Authorizing the Discharge of Wastes from Concentrated Animal Feeding Operations

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to renew and amend Texas Pollutant Discharge Elimination System/State General Permit TXG920000. This general permit authorizes the discharge of manure, sludge, and wastewater into or adjacent to water in the state by Concentrated Animal Feeding Operations (CAFOs) only during chronic or catastrophic rainfall events, or catastrophic conditions that cause an overflow. This general permit is authorized by Texas Water Code, §26.040 and under provisions of federal Clean Water Act, §402.

DRAFT GENERAL PERMIT. The executive director has prepared a draft general permit renewal, with amendments, of an existing general permit that authorizes the discharge of manure, sludge, and wastewater into or adjacent to water in the state by CAFOs properly designed, constructed, operated and maintained under the provisions of this general permit. Manure, sludge, and wastewater generated by a CAFO shall be retained and used in an appropriate and beneficial manner as provided in this general permit. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director requires regulated entities to submit a Notice of Intent, for a large CAFO, and a Nutrient Management Plan to obtain authorization under the general permit.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP),

according to General Land Office regulations, and has determined that the action is consistent with applicable CMP goals and policies.

On the date that this notice is published, a copy of the draft general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's 16 regional offices and on the TCEQ website at <https://www.tceq.texas.gov/permitting/wastewater/general/index.html>.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments about this general permit in writing or orally at the public meeting held by the TCEQ. The purpose of a public meeting is to provide an opportunity to submit comments and to ask questions about the general permit. A public meeting is not a contested case hearing. The public comment period will end at the conclusion of the public meeting.

The public meeting will be held at 1:00 p.m., March 25, 2019, TCEQ, 12100 Park 35 Circle, Building F, Room 2210, Austin, Texas 78753.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically by selecting comment about pending permit applications at <http://www14.tceq.texas.gov/epic/eComment/> by the end of the public comment period on March 25, 2019.

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comments in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin office. A notice of the commissioners' action on the draft general permit and a copy of its response to comments will be mailed to each person who submitted a comment. Also, a notice of the commission's action on the draft general permit and the text of its response to comments will be published in the *Texas Register*.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our website at: <https://www.tceq.texas.gov/>.

Further information may also be obtained by calling Ms. Joy Alabi, TCEQ Water Quality Division, at (512) 239-1318.

Si desea información en español, puede llamar al (800) 687-4040.

TRD-201900442

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 12, 2019



Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40301

Application.

Waste Connections Lone Star, Inc., 3 Waterway Square Place Suite 55, The Woodlands, Texas 77380, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40301, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, WC Weatherford Transfer Station, will be located at 3306 Old Brock Road, Weatherford City, TX 76086, in Parker County. The Applicant is requesting authorization to process, transfer, and recycle municipal solid waste which includes household waste, yard waste, commercial solid waste, non-hazardous industrial waste, construction- demolition waste, and special waste. The registration application is available for viewing and copying at the Weatherford Public Library, 1014 Charles St., Weatherford, Texas 76086, and may be viewed online at <http://ftwweaverboos.com/>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.7186&lng=-97.86&zoom=13&type=r>. For exact location, refer to application.

Public Comment/Public Meeting.

Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the Executive Director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The Executive Director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The Executive Director is not required to file a response to comments.

Executive Director Action.

The Executive Director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the Executive Director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the Executive Director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online.

For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Agency Contacts and Information.

All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en Español, puede llamar al (800) 687-4040.

Further information may also be obtained from Waste Connections Lone Star, Inc. at the address stated above or by calling Brett O'Connor at (832) 442-2920.

TRD-201900505

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 13, 2019



Notice of Correction to Agreed Order Number 15

In the August 24, 2018, issue of the *Texas Register* (43 TexReg 5572), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 15, for F80 Investment Incorporated dba 105 Suprette. The error is as submitted by the commission.

The reference to the company should be corrected to read: "F80 Investment Incorporated dba 105 Superette".

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201900429

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 12, 2019



Notice of Correction to Agreed Order Number 20

In the June 8, 2018, issue of the *Texas Register* (43 TexReg 3821), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 20, for Perrin-Whitt Consolidated Independent School District. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "\$5,500".

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201900430

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 12, 2019



Notice of Opportunity to Comment on a Default Order 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 Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's (ED) 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 ED 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 **March 25, 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 the 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 March 25, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Randy L. Snapp dba Fredericksburg Kampgrounds of America; DOCKET NUMBER: 2018-1169-PWS-E; TCEQ ID NUMBER: RN101257129; LOCATION: 5681 East United States Highway 290 near Fredericksburg, Gillespie County; TYPE OF FACILITY: public water system; RULES VIOLATED: TCEQ DO Docket Number 2016-2061-PWS-E, Ordering Provisions Numbers 3.a.iii. and 3.a.iv., by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to provide the results of nitrate sampling to the ED for the January 1 - December 31, 2014, monitoring period; PENALTY: \$62; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201900427

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 12, 2019



Notice of Opportunity to Comment on a Shutdown/Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is March 25, 2019. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 25, 2019**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: ALIAHSAN NADIA ENTERPRISES, INC. dba Diadem Food Mart; DOCKET NUMBER: 2018-0408-PST-E; TCEQ ID NUMBER: RN102014404; LOCATION: 3911 Diadem Lane, Kirby, Bexar County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST system; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide

corrosion protection for the UST system; PENALTY: \$5,011; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201900425
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 12, 2019



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 **March 25, 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 March 25, 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: Gamtex Industries LP dba Gachman Metals & Recycling; DOCKET NUMBER: 2018-0322-AIR-E; TCEQ ID NUMBER: RN100544154; LOCATION: 2600 Shamrock Avenue, Fort Worth, Tarrant County; TYPE OF FACILITY: metal recycling plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(a) and (b) and 30 TAC §101.4, by failing to prevent nuisance smoke conditions; and THSC, §382.085(b) and 30 TAC §111.111(a)(8)(A), by failing to comply with the visible emissions opacity limit of 30% for any six-minute period; PENALTY: \$2,625; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Hari Enterprises, L.L.C. dba El Campo Truck Stop; DOCKET NUMBER: 2017-0950-PST-E; TCEQ ID NUMBER: RN102280518; LOCATION: 21411 United States Highway 59 near El Campo, Wharton County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales

of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,688; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: New Oasis Kingdom Assembly Church; DOCKET NUMBER: 2018-0648-PWS-E; TCEQ ID NUMBER: RN102323458; LOCATION: 8600 Sweetwater Lane, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §§290.46(f)(4), 290.107(e), and 290.122(c)(2)(A) and (f), by failing to provide the results for synthetic organic chemical (SOC) contaminants (methods 504, 515, and 531) sampling to the executive director (ED) for the January 1, 2014 - December 31, 2016 monitoring period and failing to issue public notification and submit a copy of the public notification regarding the failure to provide the results of the SOC contaminants for the January 1, 2014 - December 31, 2016 monitoring period; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the ED each quarter by the tenth day of the month following the end of each quarter for the third and fourth quarters of 2017; 30 TAC §§290.46(f)(4), 290.115(e), and 290.122(c)(2)(A) and (f), by failing to provide the results for Stage 2 Disinfection Byproducts (DBP2) sampling to the ED for the January 1, 2014 - December 31, 2016 monitoring period and failing to issue public notification and submit a copy of the public notification regarding the failure to provide the results of the DBP2 sampling for the January 1, 2014 - December 31, 2016 monitoring period; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2015 - December 31, 2017 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to provide the results of volatile organic chemical contaminants sampling for the January 1, 2010 - December 31, 2015 and January 1 - December 31, 2016 monitoring periods, regarding the failure to provide the results for nitrite sampling for the January 1 - December 31, 2015 monitoring period and regarding the failure to provide results for metals for the January 1, 2010 - December 31, 2015 monitoring period; PENALTY: \$1,028; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Richard J. Burns dba Century Oaks Estates; DOCKET NUMBER: 2018-0052-PWS-E; TCEQ ID NUMBER: RN109144113; LOCATION: 935 Buffalo Run, Harwood, Caldwell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e), by failing to collect asbestos samples and provide the results to the executive director (ED) for the January 1, 2008 - December 31, 2016 monitoring period; 30 TAC §290.107(c) and (e), by failing to collect synthetic organic chemical contaminants and volatile organic chemical contaminants samples and provide the results to the ED for the fourth quarter of 2016; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the ED each quarter by the tenth day of the month following the end of each quarter for the second quarter of 2016 through the first quarter of 2017, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit DLQORs for the second through fourth quarters of 2016; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service Fees and associated late fees for TCEQ Financial Administration Account Number 90280025 for Fiscal Year 2017; PENALTY: \$2,016; STAFF ATTORNEY: Logan Harrell,

Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: Sandra Ortega; DOCKET NUMBER: 2017-0937-MLM-E; TCEQ ID NUMBER: RN106542483; LOCATION: 510 South Broadway, Mertzon, Irion County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: Texas Health and Safety Code, §366.004 and §366.051, 30 TAC §285.3(a)(1), and TCEQ Default Order (DO) Docket Number 2013-0757-MLM-E, Ordering Provision Number 3.d.i., failing to obtain authorization prior to constructing, installing, and operating an OSSF; and TWC, §26.121(a)(1), and TCEQ DO Docket Number 2013-0757-MLM-E, Ordering Provision Number 3.d.ii., by failing to prevent the discharge of wastewater into or adjacent to any water in the state; PENALTY: \$19,600; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(6) COMPANY: Skywater Water Supply Corporation; DOCKET NUMBER: 2018-0425-PWS-E; TCEQ ID NUMBER: RN106855067; LOCATION: 140 Busby Road near Hereford, Castro County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter for the second and third quarters of 2017; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90350014 for Fiscal Year 2017; and TWC, §5.702 and 30 TAC §291.76, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding the Certificate of Convenience and Necessity Number 13206 for calendar year 2017; PENALTY: \$128; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-201900426

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 12, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of 3AR Inc dba Handy Stop: SOAH Docket No. 582-19-2481; TCEQ Docket No. 2018-0258-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 7, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed October 4, 2018, concerning assessing administrative penalties against and requiring certain actions of 3AR INC dba Handy Stop, for violations in Dallas County,

Texas, of: Tex. Health and Safety Code §382.085(b), Tex. Water Code §26.3475(c)(1), and 30 Tex. Admin. Code §§115.246(a), 334.7(d)(3), 334.10(b)(2), 334.50(b)(1)(A), and 334.606.

The hearing will allow 3AR INC dba Handy Stop, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford 3AR INC dba Handy Stop, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of 3AR INC dba Handy Stop to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** 3AR INC dba Handy Stop, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, Tex. Health and Safety Code ch. 382, and 30 Tex. Admin. Code chs. 70, 115, and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Adam Taylor, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 6, 2019

TRD-201900510

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 13, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of E & J SONS, LLC dba Johnny's Country Corner: SOAH Docket No. 582-19-2482; TCEQ Docket No. 2017-0916-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - March 7, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 11, 2018, concerning assessing administrative penalties against and requiring certain actions of E & J SONS, LLC dba Johnny's Country Corner, for violations in Rusk County, Texas, of: Tex. Water Code §26.3475(c)(1) and (d) and 30 TAC §334.49(c)(2)(C) and §334.50(b)(1)(A).

The hearing will allow E & J SONS, LLC dba Johnny's Country Corner, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford E & J SONS, LLC dba Johnny's Country Corner, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of E & J SONS, LLC dba Johnny's Country Corner to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** E & J SONS, LLC dba Johnny's Country Corner, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 TAC chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 TAC §70.108 and §70.109 and ch. 80, and 1 TAC ch. 155.

Further information regarding this hearing may be obtained by contacting Adam Taylor, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 TAC §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Hearing Department at (512) 475-3445, at least one week before the hearing.

Issued: February 6, 2019

TRD-201900509

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 13, 2019



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit: Proposed Permit No. 2401

APPLICATION. Stacy Wershing, P.O. Box 2047, Center, Shelby County, Texas 75935, owner/operator of a proposed Type V Transfer Station facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit requesting authorization to transfer municipal solid waste. The R&J Recycling and Disposal Transfer Station facility is proposed to be located approximately 830 feet northwest of the intersection of FM 2468 and FM 699 in Center, Shelby County, Texas 75935. The TCEQ received this application on November 26, 2018. The permit application is available for viewing and copying at the Fannie Brown Booth Memorial Library, 619 Tenaha Street, Center, Shelby County, Texas 75935, and may be viewed online at <http://www.rolloffgarbage.com>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=31.811944&lng=-94.176666&zoom=13&type=r>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of

public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include the Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk,

MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. *Si desea información en español, puede llamar al (800) 687-4040.*

Further information may also be obtained from Stacy Wershing at the address stated above or by calling Ms. Stacy Wershing, Owner, R&J Recycling and Disposal Transfer Station facility at (936) 591-9695.

TRD-201900504

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 13, 2019

◆ ◆ ◆
Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: 8-Day Pre-Election Report due October 29, 2018, for Candidates and Officeholders

Spencer R. Bounds, 2408 Wydeewood Drive, Midland, Texas 79707

Joshua G. Burns, 905 S. Jennings Ave. #2117, Fort Worth, Texas 76104

Kyle A. Frels-Henry, 10926 Jollyville Rd. #715, Austin, Texas 78759

Teresa J. Hawthorne, P.O. Box 670844, Dallas, Texas 75367

Lauren L. LaCount, 2000 Brazosport Blvd. N, Richwood, Texas 77531

Mallory A. Olfers, 5534 Sunup Dr., San Antonio, Texas 78233-4488

Gilberto Velasquez, 1512 Vermont, Houston, Texas 77006-1042

Deadline: 30-Day Pre-Election Report due October 9, 2018, for Candidates and Officeholders

Kyle A. Frels-Henry, 10926 Jollyville Rd. #715, Austin, Texas 78759

Deadline: Semiannual Report due July 16, 2018, for Committees

Chanley Delk, Big Spring Professional Firefighters PAC, 5613 Rodeo St., Midland, Texas 79705

Jack Drake, Move Houston State PAC, 10709 Marsha Ln., Houston, Texas 77024

Lindsey Edwards, Vote Yes Aledo ISD, 116 Greystone St., Aledo, Texas 76008

Ronald Hamilton, Citizen Input PAC, 3245 W. Main St., Ste. 235-113, Frisco, Texas 75034

Larry M. Hicks, Flood Solutions PAC, 10500 Northwest Fwy., Ste. 212, Houston, Texas 77092

Ray Charles Jones, North Side Political Action Group, P.O. Box 11071, Houston, Texas 77293

Esmer Lopez, Weslaco Municipal Police Association PAC, 4804 Mile 9 N., Mercedes, Texas 78570

Matt Mackowiak, Travis County Republican Party (P), 807 Brazos St., Ste. 810, Austin, Texas 78701

Andres Morales, Liberty Executive Committee, P.O. Box 1165 Penitas, Texas 78576

William Raba, Northside Bond Committee, P.O. Box 680073, San Antonio, Texas 78268-0073

Austyn T. Smith, Travis County Firefighters Association Local 4583, 621 Faircrest Dr., Buda, Texas 78610

Susie M. Sullivan, Nueces County Republican Executive Committee (CEC), 1414 Valero Way, Corpus Christi, Texas 78411

TRD-201900370

Seana Willing

Executive Director

Texas Ethics Commission

Filed: (512) 463-5800

◆ ◆ ◆
Texas Health and Human Services Commission

Public Notice - Waiver Renewal of the Community Living Assistance and Support Services Waiver Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for a renewal of the Community Living Assistance and Support Services (CLASS) waiver program, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2019. The proposed effective date for the amendment is September 1, 2019, with no changes to cost neutrality.

The renewal request proposes to make the following changes:

Main

Revision to the state transition plan based on guidance from CMS

Appendix A

Revisions to reflect the changes from transformation

Appendix B

Individual cost limit changes from 200% to the dollar amount

Language clarification and transformation updates

Unduplicated Number of Participants is updated

Point-in-Time is updated

Reserved capacity group Money Follows the Person (MFP) is updated to Promoting Independence (PI)/MFP

Reserved capacity numbers are updated

Medicaid Eligibility groups are corrected

Regular Post-Eligibility Treatment of Income is updated to use the rules under section 1924 of the Social Security Act

Removing quarterly minimum frequency for case management

Changing qualifications of individuals performing initial evaluation of level of care from 2 years of experience to 1 year

Updating the required adaptive behavior tool to the current version

Access to Services by Limited English Proficient Persons is updated

Remediation method updates

Appendix C

Service taxonomy is added

Clarifying language for Community First Choice, a state plan service, is incorporated into applicable services

Clarifying language is added around provider qualifications and verification

Transformation language updates are included

Updates to home and community support services agency accreditation entity under provider qualifications on select services

Clarification on the frequency of verification of provider qualifications is added

Clarification that insurance copayments for therapeutic services offered in the CLASS service array are covered as an adaptive aid

Adding licensure requirements for Behavior Support providers in accordance with Texas Occupations Code, Chapter 506

Remediation method updates

Appendix D

Entities and/or individuals that have responsibility for service plan development may no longer provide other direct waiver services to the participant

Program policies are updated to include person centered focus

Clarifying language and transformation related updates

Updating the standardized assessment tool for determining the adaptive behavior level to the most current versions

Clarification that Community First Choice, a state plan service is included

Remediation method updates

Appendix E

Language clarification and transformation updates

Clarified process for the individual to request reallocation of funds among services included in the budget through a service planning team meeting and revision to the individual plan of care

Completed the additional section in E-2.a.ii on additional staff qualification

Appendix F

Language clarification and transformation updates

Clarification that Appeals and Fair Hearing records are kept electronically instead of hard copies

Fair hearing policy is updated

Appendix G

Transformation related changes

Updates allowing restrictive interventions

Medication error reporting is updated to reflect providers reporting to HHSC

Remediation method updates

Appendix H

Transformation related changes

Clarification added around advisory committees used to inform and make recommendations regarding appropriate care settings for persons with disabilities

Completed the additional section H-2 on the use of patient experience/quality of life surveys

Appendix I

Transformation updates

Electronic Visit Verification is being utilized

Method of provider payment is updated with clarification

Appendix J

Updates are included with the next 5 years of forecasting and cost neutrality demonstrations

Quality Improvement

Changing measures to come into compliance with the 2014 CMS guidance, as a result of transformation, to make improvements to the measures, clarify language and to add some new measures. Affected measures include: B.a.1, B.c.1, C.a.1, C.a.2, C.a.3, C.a.4, C.b.1, C.b.2, C.b.3, C.b.4, C.b.5, C.c.2, C.c.3, C.c.4, D.a.1, D.c.1, D.c.2, D.d.1, D.e.1, D.e.2, D.e.3, G.a.1, G.a.2, G.a.3, G.a.4, G.a.5, G.a.6, G.a.7, G.a.8, G.a.9, G.a.10, G.a.11, G.b.1, G.b.2., G.b.3, G.c.1, G.c.2, G.d.1, G.d.2, I.a.1, I.a.2, I.a.3, I.a.4, I.a.5, and I.b.1.

The CLASS waiver, first authorized September 1, 1991, provides community-based services and supports to eligible individuals as an alternative to an intermediate care facility for individuals with intellectual disabilities. CLASS waiver services are intended to, as a whole, enhance the individual's integration into the community, maintain or improve the individual's independent functioning, and prevent the individual's admission to an institution. Services and supports are intended to enhance an individual's quality of life, functional independence, health and welfare, and to supplement, rather than replace, existing informal or formal supports and resources.

An individual may obtain free copies of the proposed waiver renewal, including the CLASS settings transition plan, or if you have questions, need additional information, or wish to submit comments regarding this amendment or the CLASS settings transition plan, interested parties may contact Courtney Pool by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Courtney Pool, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 424-6889

Fax

Attention: Courtney Pool, Waiver Coordinator, at (512) 487-3403

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

In addition, the HHSC local offices will post this notice for 30 days. The complete waiver renewal request can be found online on the HHSC website at:

<https://hhs.texas.gov/laws-regulations/policies-rules/waivers/class-waiver-applications>

TRD-201900439

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: February 12, 2019



Texas Department of Insurance

Company Licensing

Application for Delta Lloyds Insurance Company of Houston, Texas, a domestic Lloyd's plan, to convert and change its name to Delta Conversion Insurance Company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201900478

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: February 13, 2019



Exempt Filing Notification under Texas Insurance Code Chapter 5, Article 5.96

Notice of Petition by Texas Mutual Insurance Company to Rescind, in Part, Commissioner's Order No. 2016-4795 Regarding Classification Code 0923

Description:

Texas Mutual Insurance Company (TMIC) filed Petition No. W-0119-01 (ECase 18238), asking that TDI rescind, in part, Commissioner's Order No. 2016-4795 to permit the continued use of A-rated Classification Code 0923--Domestic Workers--Residences--Payroll Basis.

Previous Commissioner's Orders reclassified domestic workers from a payroll basis to a per capita basis. Based on petitions from the National Council on Compensation Insurance (NCCI), Commissioner's Order No. 2016-4795 and Commissioner's Order No. 2017-5055 eliminated Code 0923 (payroll basis), effective July 1, 2019, and reclassified domestic workers to Code 0913 (per capita basis). Commissioner's Order No. 2018-5569 later established Code 0908 for part-time domestic workers on a per capita basis, and revised Code 0913 to include only full-time domestic workers on a per capita basis.

TMIC requests that TDI continue to permit workers' compensation carriers to use either Code 0923 (payroll basis), or Codes 0913 and 0908 (per capita basis) for residential domestic employees. TMIC asserts that retaining this flexibility will allow carriers and their policyholders to continue to benefit from the availability of both payroll and per capita rate bases.

This is a filing under Insurance Code Article 5.96.

Affected NCCI Manual Rules:

Basic Manual for Workers Compensation and Employers Liability Insurance

Review and Comment:

TDI prepared this notice in response to Texas Mutual's petition. You may review a copy of the petition and the associated orders and filings referenced above in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701; or at www.tdi.texas.gov/rules/2019/nccimanual.html during the comment period.

To comment on the petition, submit your comments to Chief-Clerk@tdi.texas.gov or to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 by 5:00 p.m., Central time, on March 27, 2019. Refer to TDI ECase No. 18238.

Notice of Public Hearing:

The Commissioner will also consider written and oral comments on the petition in a public hearing under Docket No. 2811 at 2:00 p.m., Central time, March 27, 2019, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The legal authority for this hearing is Texas Insurance Code Article 5.96.

TRD-201900498

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: February 13, 2019



Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) will submit to the Texas Workforce Commission (TWC) a Two Year Modification to the Panhandle Workforce Development Area FY 2017-2020 Integrated Plan, on or before March 15, 2019.

Interested parties may examine the Modified FY 2017-2020 Plan on the PRPC website at: <http://theprpc.org/Programs/WorkforceDevelopment/default.html> beginning February 22, 2019. Copies may also be requested by email using the contact information listed below.

PRPC will accept written public comments on the Two-Year Modification of the FY 2017-2020 Plan submitted by 5:00 p.m. on Friday, March 11, 2019. Written comments may be sent to Georgette Pond, Workforce Development Planning Coordinator, by email: gpond@theprpc.org, or by mail: Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, Texas 79105-9257.

Equal Opportunity Employer/Program Auxiliary aids and services are available upon request to individuals with disabilities Relay Texas: 711

TRD-201900369

Georgette Pond

Workforce Development Planning Coordinator

Panhandle Regional Planning Commission

Filed: February 6, 2019



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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